

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	
BellSouth Telecommunications, Inc.	)	WC Docket No. 02-150
and BellSouth Long Distance Inc.	)	
For Provision of In-Region, InterLATA	)	
Services In Alabama, Kentucky, Mississippi,	)	
North Carolina and South Carolina	)	

**DECLARATION OF CHERYL BURSH AND SHARON E. NORRIS  
ON BEHALF OF AT&T CORP.**

July 11, 2002

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**DECLARATION OF CHERYL BURSH AND SHARON E. NORRIS  
ON BEHALF OF AT&T CORP.**

**I. PROFESSIONAL BACKGROUND OF SHARON E. NORRIS**

1. My name is Sharon E. Norris. My business address is P.O. Box 658, Loganville, Georgia 30052. I have been employed in the telecommunications industry for over twenty-seven years. I currently serve as a consultant with SEN Consulting. In that capacity, I have monitored and analyzed, on an ongoing basis, BellSouth's compliance with its obligations to provide AT&T nondiscriminatory access to BellSouth's OSS. I previously have been employed by both AT&T and Southern Bell. Prior to retiring from AT&T in 1998, I had been an employee there since 1983, a member of its Law and Government Affairs Division since 1991, and AT&T's representative to the Georgia Public Service Commission ("Georgia PSC") since 1995. From 1973 until 1983, I held various positions in Southern Bell's business offices, business marketing organizations, retail stores, and support staff organizations. I received a degree in Distributive Education from DeKalb College in 1972. As AT&T's representative to the Georgia PSC, I advocated AT&T's position on issues relating to opening Georgia's local exchange markets to competition. Beginning in 1997, I also began to monitor and analyze BellSouth's compliance

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with its OSS obligations throughout its nine-State region, a responsibility I continued to maintain when I retired from AT&T.

2. I have had extensive involvement in the State proceedings in BellSouth's region relating to the development, testing, and evaluation of BellSouth's OSS and other subjects. I have appeared in state workshops in Alabama, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Tennessee that covered a wide range of topics including OSS, performance measures, and third-party testing. I have also testified before the State public utility commissions in the States in the BellSouth region, with the exception of Florida. Finally, I have testified before this Commission in proceedings involving BellSouth's first Section 271 application for Louisiana (CC Docket No. 97-231) and, more recently, in the proceedings involving BellSouth's joint application for Section 271 authority in Georgia and Louisiana (CC Docket Nos. 01-277 and 02-35).

**II. PROFESSIONAL BACKGROUND OF CHERYL BURSH**

3. I am employed by AT&T Corp. as a District Manager. I am responsible for performance measurement and remedy plan advocacy for the AT&T – Southern Region. My area of expertise is the development of an effective methodology for measuring BellSouth's performance. I have represented AT&T in several regulatory proceedings, including performance measurement workshops and hearings conducted in Louisiana, North Carolina, Florida and Georgia. I have held a variety of management positions at AT&T over the last 19½ years, involving, *inter alia*, strategic planning, sales of large business systems and telecommunications services, development for operation support systems, product marketing, and technical support for computer systems. I have a Bachelor of Science Degree from Johnson C. Smith University

and a Master of Science Degree from George Washington University. I have appeared in state workshops that have covered a wide range of topics, including performance measures and performance remedy plans. I have testified before the State public utility commissions in the States in the BellSouth region. Finally, I have also testified before this Commission in proceedings involving BellSouth's joint application for Section 271 authority in Georgia and Louisiana (CC Docket Nos. 01-277 and 02-35).

### **III. PURPOSE AND SUMMARY OF DECLARATION**

4. The purpose of this Declaration is to respond to BellSouth's allegations that its: (1) performance data are accurate and reliable; (2) commercial performance data show that it has satisfied its Section 271 obligations; and (3) performance remedy plans will assure future statutory compliance in the wake of Section 271 relief. In embellishing these allegations, BellSouth contends that all of these issues are all but settled as a result of the *Georgia/Louisiana 271 Order*. Whatever the record may have reflected in the *Georgia/Louisiana 271* proceeding, BellSouth's conduct and performance since the issuance of the *Georgia/Louisiana 271 Order* show that its reliance on the Commission's decision in that proceeding to support its current five-State Application is misplaced.

5. First, as described in Part IV, BellSouth's data are not reliable because: (1) BellSouth has continued to make unilateral changes to the approved methodology for calculating performance results; (2) BellSouth has failed to engage, in any meaningful way, in the data reconciliation process; (3) BellSouth's performance data are riddled with discrepancies, inconsistencies, and errors; and (4) KPMG's audits in Florida and Georgia provide further confirmation that BellSouth's data are untrustworthy.

6. Part V explains that BellSouth's own inadequate performance data show that it has not satisfied Section 271 obligations. BellSouth's performance data show that: BellSouth's flow-through rates are too low; its rejection rates are too high; its service order accuracy rates are inadequate; and BellSouth does not issue status notices in a timely manner. Furthermore, BellSouth's own data show that it has failed to meet the performance standards for numerous provisioning, maintenance and repair and billing metrics.

7. Invariably, when confronted with its own data showing performance failures, BellSouth offers a host of rationalizations and excuses or resorts to promises to show that improved future performance should be fully expected. These excuses, however, are baseless and self-serving, and BellSouth's unfulfilled promises of future compliance have no probative value in the context of this proceeding. Moreover, because BellSouth has not adhered to the commitments it made during the *Georgia/Louisiana 271* proceeding, its promises in this proceeding should not be credited.

8. Part VI explains that the performance remedy plans on which BellSouth relies cannot serve to deter backsliding. Where, as here, the evidence shows that BellSouth's performance data are unreliable, the effectiveness of any performance enforcement plan is fatally compromised. For this reason, the performance remedy plans in every State included in BellSouth's Application cannot serve as effective deterrents against anticompetitive conduct. But even if BellSouth's data were accurate -- and they are not -- BellSouth's reliance on the remedy plans in Alabama and North Carolina to support its Application is premature. The performance enforcement plans currently in place in these States are in effect on an interim basis only. In Alabama, the Georgia SEEM is in effect on a temporary basis until a final remedy is

adopted after the six-month review. In North Carolina, the State Commission has not yet selected the metrics that will be included in the final remedy plan. Accordingly, at this juncture, it is impossible to know whether the permanent remedy plans that will be adopted in these States will satisfy the key criteria this Commission has determined are important in assessing the effectiveness of performance enforcement plans.

9. For all of these reasons, BellSouth has not met its burden of demonstrating that its data are “meaningful, accurate and reproducible” and that these data show that it has complied with its Section 271 obligations and will comply with such obligations after Section 271 entry. *Texas 271 Order*, ¶ 428.

**IV. BELLSOUTH’S PERFORMANCE DATA ARE UNRELIABLE.**

**A. BellSouth’s Unilateral Revisions to Metrics.**

10. In its Application, BellSouth contends that this Commission’s *Georgia/Louisiana 271 Order* “determined that BellSouth’s data validation processes provide reasonable assurance of data reliability and accuracy,” and that the same reasoning that “persuaded the Commission of the accuracy, reliability and usefulness of performance data in Georgia/Louisiana are present in the Five States.” Varner Aff. ¶ 117. BellSouth’s contentions are fundamentally flawed.

11. A performance measurement plan cannot serve its intended purpose if it is subject to unilateral manipulation and redefinition by the BOC. BellSouth’s performance data are not accurate or trustworthy because, contrary to the expectations of this Commission, BellSouth has continued to make unilateral changes to the methodology for calculating performance results.

12. In this regard, in its comments on BellSouth’s Georgia/Louisiana Section 271 application, AT&T argued that BellSouth’s performance data could not be trusted because



BellSouth unilaterally modified the business rules governing performance measures. As a prime example of BellSouth's conduct, AT&T pointed out that BellSouth unilaterally changed the methodology for calculating its service order accuracy results. The Department of Justice also expressed concerns that BellSouth modified the service order accuracy measure without notice to CLECs. *See Georgia/Louisiana 271 Order*, ¶ 159 n. 575. Notably, the GPSC also concurred with the observation of the Department of Justice "that changes to performance measurement calculations 'should be made only with public notice and the concurrence'" of the GPSC. GPSC Reply Comments at 8 (citation omitted). Furthermore, the GPSC emphasized that BellSouth should provide prior written notice of proposed revisions to measurements that would permit interested parties to comment thereon before changes are implemented, stating (*id.* at 8-9):

Accordingly, in its recommendation as part of the Commission's current review of the existing performance measurements and enforcement plan, the Commission Staff will include a requirement that would obligate BellSouth to provide written notice of any proposed changes to the method of calculating any performance measurement prior to such changes being implemented. The notice should include, at a minimum, a description of the proposed change as well as the reason for the change, which would give interested parties the opportunity to comment on any proposed change before that change has been made. Additionally, Staff will recommend that BellSouth be penalized for changing the Service Order Accuracy SQM without prior Commission approval.

13. Critically, this Commission also "support[ed] the recommendations by both the Georgia and Louisiana Commission Staffs that would require BellSouth to provide prior notice of any proposed changes to the calculation of performance measures prior to implementation." *Georgia/Louisiana 271 Order*, ¶ 159 n. 575. Although the Commission ultimately found that BellSouth's data were "sufficiently reliable," the Commission also made clear "that access to complete and accurate data will be important to the Commission's

assessment of BellSouth's future performance." *Georgia/Louisiana 271 Order*, ¶ 20.

Notwithstanding the concerns expressed by the Department of Justice, the comments of the GPSC, and the Commission's endorsement of the recommendations of the staffs of the GPSC and LPSC, BellSouth has continued to make unilateral changes to the methodology for calculating measurements without the prior concurrence of the GPSC and without prior notice to the CLECs that would afford them an opportunity for comment.

14. In this regard, noting its commitment "to ensuring that it provides advance notice to regulators and affected CLECs of changes in the way the performance data are calculated," BellSouth contends that it provided, on May 23, 2002 and June 4, 2002 purported "notice to the GPSC and to CLECs, and other state commissions of the changes it was making in connection with April 2002 data." Varner Aff., ¶ 111. BellSouth's contention that its May 23<sup>rd</sup> and June 4<sup>th</sup> submissions somehow constituted the kind of advance notice envisioned by the Department of Justice, the state commissions and CLECs during BellSouth's Georgia/Louisiana 271 application borders on the frivolous.

15. By letter dated May 23, 2002, BellSouth filed before the GPSC a purported "notice," stating that, as a result of updates to its Performance Measurement Analysis Platform ("PMAP"), it was "planning to implement certain changes" to the methodology for calculating performance results.<sup>1</sup> This notice ostensibly was designed to provide the GPSC and all interested parties with prior notice of no fewer than 24 changes that BellSouth planned to

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<sup>1</sup> Letter from Bennett L. Ross to Reese McAlister dated May 23, 2002 at 1 ("May 23 Notice") (attached hereto as Attachment 1).

implement commencing with its April reported performance results (which, according to BellSouth, would be posted on May 31, 2002). *Id.*, Attachment at 1.

16. Although BellSouth stated in its May 23 Notice that its April data would be posted on May 31, consistent with its practice of posting preliminary performance results on the twenty first day of every month,<sup>2</sup> BellSouth actually posted its April data on May 21. Thus, BellSouth filed its so-called "Notice" two days *after* it posted its preliminary April performance results. Clearly, in order to post its preliminary April results on May 21, BellSouth had to implement programming changes well in advance of BellSouth's May 23 Notice. Further, BellSouth never obtained the prior approval of the GPSC before implementing these changes in its preliminary April performance results. Although BellSouth had ample opportunity to present these metrics changes before the GPSC during ongoing proceedings in Georgia, it failed to do so and elected instead to implement unauthorized changes to the metrics and post a so-called "notice" about these changes after the fact. Thus, the reality is that BellSouth's May 23 Notice is nothing of the sort and cannot possibly be characterized as the kind of *prior* written notice that this Commission, the GPSC, and DOJ envisioned.

17. To make matters worse, on June 4, 2002, BellSouth "identified additional changes that are being made in the calculation of its performance results."<sup>3</sup> In its June 4 submission (which again refers to changes to be implemented with its April data), BellSouth

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<sup>2</sup> On its PMAP website, BellSouth states explicitly that its "procedure for posting reports raw data, and the Raw Data User Manual (RDUM) to the web is to post complete and accurate versions on the 21st of the month."

<sup>3</sup> Letter from Bennett Ross to Reece McAlister dated June 4, 2002 (attached hereto as Attachment 2).

identified four new metrics changes and additions to six of the 24 metrics changes reflected in its May 23 Notice. Notably, BellSouth issued its June 4 purported “notice” to the CLECs at 4:06 p.m.; however, its final performance results were posted at 6:59 a.m. on June 5. Given this set of circumstances, BellSouth cannot legitimately contend that the 15 hour interval that elapsed between its June 4 Notice and the posting of its data constituted the written advance “notice.”

18. BellSouth’s May 23 and June 4 “notices” are defective in another important respect. In its comments, the GPSC stated that prior written notice should provide sufficient information regarding the nature and basis for the proposed changes that would permit interested parties to comment thereon. BellSouth’s “notice” fails this basic test. For example, in its May 23 “notice,” BellSouth stated that it planned to implement “more specific product identification to assign data to the Line Sharing, and Combo Other categories.” May 23 Notice at 1. BellSouth stated further that “improved product mapping” would “reflect more types of EELs in the Combo Other category...” *Id.* However, the May 23 Notice is bereft of any information regarding the types of EELs that are not included in the UNE Combo category. In addition, the “notice” is silent regarding the specific changes that would impact line sharing performance results.

19. Similarly, in its May 23 Notice, BellSouth stated that it was implementing changes for “identifying whether an FOC or Reject was returned on x DSL orders.” May 23 Notice at 2. However, the “notice” fails to identify the specific coding change that BellSouth implemented or the “new” method that BellSouth is using to identify FOCs and rejects or the nature of the problem that would be eliminated as a result of changes in the metrics calculation process.

20. Furthermore, in its May 23 Notice, BellSouth stated that “improved methods will be implemented to assign CLEC resale and trouble tickets and lines” to certain product categories. May 23 Notice at 3. However, BellSouth’s “notice” glaringly omits information describing the purported “improved methods” it has implemented. The foregoing are illustrative examples which highlight the paucity of information that BellSouth provided in its so-called “notices.” Because of the dearth of information that BellSouth has provided, it is impossible for CLECs to assess the propriety and impact of the proposed changes on performance results.

21. Because of BellSouth’s unilateral conduct which has made a mockery of the performance monitoring process, the Southeastern Competitive Carriers Association (“SECCA”) filed an emergency Motion to Establish a Procedure for Implementation of Changes to the Service Quality Measures. In this motion, SECCA requested the GPSC to require BellSouth to comply with procedures for implementing changes to the methodology for calculating performance results. Although this motion has been resolved by the GPSC and a compromise has been reached, it remains to be seen whether BellSouth will cease its practice of making unilateral changes to the metrics and finally honor its commitment to provide the kind of meaningful, advance written notice of metrics changes that this Commission endorsed. Until BellSouth has clearly demonstrated that it will abide by its commitment, no solace can or should be taken that BellSouth will refrain from redefining the metrics whenever it suits its purposes.

**B. BellSouth’s Unfulfilled Promises Regarding Data Reconciliation.**

22. In evaluating the commenters’ arguments challenging the reliability of BellSouth’s performance data in its Georgia/Louisiana Section 271 application, the Commission

noted, with approval, BellSouth's stated willingness "to engage in data reconciliations with any requesting carrier." *Georgia/Louisiana 271 Order*, ¶ 18 (footnote omitted). Based upon, *inter alia*, "BellSouth's readiness to engage in data reconciliations, and the oversight of the Georgia and Louisiana Commissions," the Commission found "that, as a general matter, BellSouth's performance data is accurate, reliable and useful." *Id.*, ¶ 19. BellSouth contends that the Commission's finding in the *Georgia/Louisiana 271 Order* applies with undiminished force here because BellSouth has a "group of employees designated" to engage in data reconciliation with the CLECs to assure the reliability of BellSouth's data. Varner Aff. ¶ 124. BellSouth's contentions are totally devoid of merit.

23. Notwithstanding BellSouth's stated promises, BellSouth's conduct since the Commission's issuance of the *Georgia/Louisiana 271 Order* demonstrates that BellSouth has not engaged in any meaningful way in the data reconciliation process. Indeed, BellSouth's responses to AT&T's inquiries regarding the integrity and reliability of BellSouth's performance data have been incomplete, unsatisfactory, and untimely.

24. In this regard, before January 2002, AT&T transmitted all inquiries regarding performance measurements and data integrity to the AT&T BellSouth Account Team. In 2000 and 2001, it took BellSouth 6 weeks on average to respond to AT&T's inquiries regarding data integrity issues. at 1. In 2001, it took BellSouth on average 7 weeks to respond to AT&T's inquiries.

25. In January 2002, BellSouth directed AT&T to transmit any future inquiries regarding performance data to the BellSouth PMAP team. AT&T complied with BellSouth's

request. Additionally, in March 2002, BellSouth stated that all future responses to inquiries regarding performance data will be reviewed by BellSouth's External Response Team (ERT).

26. However, far from working cooperatively and expeditiously to address AT&T's data integrity concerns, BellSouth has taken excessively long periods of time to respond to AT&T's inquiries, and, when BellSouth finally does respond, its answers are grossly inadequate. Thus, for example, on February 12, 2002, E.D. Charles Analytics ("E.D. Charles"), on behalf of AT&T, asked BellSouth why PMAP reports contain different volumes for LNP LSRs for a given month. E.D. Charles pointed out that BellSouth reported 2,526 LNP LSR for an OCN in the LNP Flow-through Aggregate Report, but reported 1,859 LNP LSRs in the LNP % Rejected Service Requests, FOC & Reject Response Completeness and Percent Rejected Service Requests reports for the same month.<sup>4</sup>

27. As a matter of simple logic and based upon the business rules governing these performance reports, BellSouth's LNP Flow-Through and PMAP Reports should reflect the comparable LNP LSR volumes. Although BellSouth responded to AT&T's inquiry two days later, BellSouth's response did not address all of AT&T's questions, and BellSouth provided inaccurate information which raised additional questions. As a consequence, on February 20, 2002, E.D. Charles sent BellSouth follow-up questions, along with copies of BellSouth's PMAP and CLEC aggregate reports containing the internal inconsistencies. Incredibly, over 8 weeks passed before BellSouth responded on April 22. Worse yet, BellSouth's response was wholly

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<sup>4</sup> See 2/12/02 Inquiry to BellSouth Chronology of Events (attached as Attachment 3).

insufficient. On May 10, 2002, E.D. Charles pointed out the deficiencies in BellSouth's response and requested that BellSouth provide responsive answers to the questions posed.<sup>5</sup>

28. In this regard, E.D. Charles noted that it had provided BellSouth with detailed information regarding BellSouth's data discrepancies and fully expected BellSouth to provide comprehensive, responsive answers to the questions that AT&T raised. E.D. Charles also pointed out that BellSouth's response consisted, in large measure, of nothing more than highly generalized statements that failed to address the specific issues that AT&T raised, and that BellSouth's responses were internally inconsistent or were belied by BellSouth's own data.

29. For example, in response to AT&T's inquiry regarding the reason why 2,526 LNP LSRs are identified in the flow-through report, but only 1,859 LNP LSRs are identified in other reports, BellSouth stated that the total number of mechanized LSRs in the LNP flow-through reports included all LNP products, not just LNP Standalone LSRs. However, AT&T pointed out that this explanation was belied by BellSouth's own data which showed that there were *no* mechanized LNP products in the flow-through report other than LNP Standalones.

30. Similarly, in response to AT&T's inquiry as to whether electronic orders are classified as partially mechanized when they are handled by a service representative, BellSouth stated that AT&T's assumption was entirely correct. *Id.* at 3. However, BellSouth's response conflicted with BellSouth's prior representation that such orders are classified "as partially or fully mechanized." *Id.*

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<sup>5</sup> See Letter from E.D. Charles Analytics to Philip W. Porter dated May 10, 2002 at 3 (attached as Attachment 4).



31. Additionally, in response to AT&T's inquiries regarding the apparent internal inconsistencies and discrepancies in order volumes reflected in different performance reports, BellSouth responded broadly that these discrepancies are "due to differences in business rules between the various reports." *Id.* Conspicuously absent from BellSouth's response was any specific information regarding the so-called business rules that would somehow account for the inconsistencies in the specific data that AT&T provided. Because of the inadequacies in BellSouth's response, E.D. Charles, on behalf of AT&T, advised BellSouth that (*id.* at 4):

Although some portions of BellSouth's responses were helpful, I feel I must point out that my AT&T clients and I were disappointed with the time it took to receive the final response. Because I had provided specific data and copies of the BellSouth reports in question, I patiently assumed that BellSouth was preparing a much more detailed and helpful overall response than the one sent on April 22<sup>nd</sup>. Unfortunately, my fundamental question, raised almost three full months ago about what are now five-months-old LSRs, remains unanswered.

32. Because of BellSouth's lack of responsiveness, AT&T was forced to send an escalation letter to BellSouth on May 17, 2002 in which it once again complained about BellSouth's inadequate responses and excessive delays in addressing AT&T's data integrity concerns.<sup>6</sup> On May 21, 2002, BellSouth advised AT&T that, "it is not possible for BellSouth to provide an estimate of the date when BellSouth will provide a complete and detailed response to [E.D. Charles] May 10, 2002, letter."<sup>7</sup>

33. BellSouth's rejoinder on June 17 was inappropriate and inadequate. On that day, BellSouth advised AT&T that it had provided sufficient responses to AT&T's data

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<sup>6</sup> See Letter from AT&T to Jim Schenk dated May 17, 2002, (attached as Attachment 5).

<sup>7</sup> Letter from Philip Porter to E.D. Charles dated May 21, 2002 at 1-2 (attached as Attachment 6).

integrity questions and directed AT&T to “use the documents available to it.”<sup>8</sup> AT&T has since notified BellSouth that its prior so-called “answers” have been and remain woefully inadequate because they constitute nothing more than highly generalized responses which fail to address AT&T’s specific concerns. Reminding BellSouth of its commitment during the *Georgia/Louisiana 271* proceeding to engage in data reconciliation, AT&T demanded to meet with BellSouth to resolve these issues.<sup>9</sup>

34. Most recently, BellSouth has advised AT&T that it is willing to meet to discuss these issues. Undoubtedly, its willingness to do so is due, in no small part, to the pendency of its five State Application. Although a meeting is a step in the right direction, the fact remains that over four months have passed since AT&T first inquired about data integrity issues, and AT&T still has not received a complete and responsive answers to its questions. Moreover, it remains to be seen whether AT&T will finally receive a meaningful response during its upcoming meeting with BellSouth. Thus, BellSouth’s representations to the Commission in the *Georgia/Louisiana 271* proceeding regarding its so-called “readiness” to engage in the data reconciliation process have proven to be illusory.

**C. Discrepancies and Errors in BellSouth’s Reported Data for AT&T.**

35. Contrary to its assertions, BellSouth’s performance data are neither accurate nor reliable. Indeed, AT&T has uncovered numerous discrepancies, inconsistencies and

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<sup>8</sup> Letter from Philip Porter to Denise Berger dated June 17, 2001 (attached as Attachment 7).

<sup>9</sup> See Letter from AT&T to Phillip Porter dated June 25, 2002 (attached at Attachment 8).

errors in BellSouth's reported data for AT&T. A few illustrative examples of these problems are set forth below.<sup>10</sup>

36. **LNP Flow-Through/Partially Mechanized Service Orders.** The unreliability of BellSouth's performance data is demonstrated by the discrepancies and inconsistencies in BellSouth's performance reports for AT&T that are based on common sets of data that should contain the same volumes of LSRs. These discrepancies and inconsistencies are not insignificant. For example, AT&T contacted BellSouth regarding discrepancies between BellSouth's March 2002 LNP LSR Flow Through and Issued Service orders and the LNP FOC Timeliness and Reject Interval raw data.<sup>11</sup> BellSouth's LNP LSR Flow Through Log includes all LNP LSRs that became issued service orders. Issued service orders are LSRs submitted electronically and which flow through BellSouth's system without manual intervention. As a consequence, the same LNP LSRs that are identified as service orders on the LNP LSR Flow Through Log should also appear in the LNP FOC Timeliness raw data. However, AT&T discovered that 725 (or over 13%) of the issued service orders in the LNP LSR Flow-through Log appear as partially mechanized orders in the LNP FOC Timeliness raw data. This discrepancy suggests that: (1) BellSouth is inflating its flow through performance by improperly including partially mechanized LSRs in its LNP Flow Through Report; or (2) BellSouth's FOC Timeliness results are inaccurate because it has misclassified fully mechanized LSRs as partially mechanized orders in its FOC Timeliness Report. Under either scenario, BellSouth's flow

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<sup>10</sup> As discussed herein, AT&T has also discovered errors in BellSouth's Missed Installation Appointments Report for AT&T.

<sup>11</sup> Electronic Message from K.C. Timmons to Phillip Porter dated May 28, 2002 (attached as Attachment 9).

through data or FOC timeliness results are inaccurate. However, BellSouth has not responded to AT&T's inquiries regarding these issues.<sup>12</sup>

37. **LNP Auto-Clarifications.** AT&T has also found that Auto-Clarifications in BellSouth's LNP flow-through reports appear as partially mechanized orders in the reject raw data. In this regard, AT&T has found that 133 of the 514 Auto-Clarifications in the LNP Flow-through raw data appear as Partially Mechanized orders in the LNP Reject raw data. Thus, over 25% of AT&T's Auto-Clarifications in the LNP Flow-through Report are classified as Partially Mechanized in BellSouth's reject raw data. As a consequence, BellSouth is misclassifying fully mechanized LSRs as partially-mechanized LSRs in its LNP reject data.

38. **Number of LSRs in the LNP Flow-Through and PMAP Reports.** As noted above, AT&T has found irreconcilable discrepancies in the reported volumes of AT&T's Broadband LNP orders in BellSouth's LNP flow-through and PMAP reports. BellSouth has yet to provide a plausible explanation for these discrepancies. The following chart provides information regarding the inconsistencies in BellSouth data:

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<sup>12</sup> Relatedly, during the Florida third party test, KPMG issued Observation 184, finding that it was not receiving timely fully-mechanized FOCs for orders that were classified as flow-through orders on BellSouth's flow-through report. In its response, BellSouth stated that these FOCs should be governed by the benchmark standard for *partially-mechanized* orders. Accordingly, it appears that KPMG (like AT&T) had orders that were classified by BellSouth as flow-through or fully mechanized on one report, but were classified by BellSouth as partially mechanized orders in another report. See Florida OSS BellSouth's Response to KPMG Observation 184, dated May 15, 2002. The KPMG Florida Observations and Exceptions that are discussed herein can be accessed on the Florida Public Service Commission website:  
<http://www.psc.state.fl.us/industry/telecomm/oss/oss.cfm?OnEtest=show>

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**WC DOCKET NO. 02-150**

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AT&T Broadband LNP Total LSR Count				
	December 2001		January 2002	
	OCN 7xxx	OCN 7xxx	OCN 7xxx	OCN 7xxx
LNP Flow-through	2,526	2,601	2,804	5,150
PMAP Reports	1,859	2,290	2,322	3,915
Gaps	667	311	482	1,235
	26%	12%	17%	24%

39. **Completion Notices.** On May 29, 2002, AT&T contacted BellSouth regarding apparent discrepancies in its March Average Completion Notice Interval (ACNI) raw data.<sup>13</sup> AT&T pointed out that 4,174 completion notices reflected in BellSouth's March Average Completion Notice Interval (ACNI) raw data file are not included in BellSouth's March Order Completion Interval (OCI) raw data file. Thus, there were no completed orders in the order completion interval data for approximately 40% of AT&T's completion notices. This discrepancy suggests that these 4,174 completion notices are not actually completion notices, or that BellSouth has excluded the data from the corresponding completed orders reports. Under either scenario, BellSouth's data are not accurate. AT&T asked BellSouth to provide detailed information regarding the reasons for these discrepancies. BellSouth has not yet responded to this inquiry.

40. **Discrepancies Between Published SEEM Report and Payments.**

AT&T has also found discrepancies in BellSouth's performance remedy payment (PARIS) reports. There are significant differences between the penalty payments that AT&T has received and the penalty amounts which are posted in BellSouth's PARIS report. To make matters worse,

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<sup>13</sup> Electronic message from K.C. Timmons to Phillip Porter dated May 29, 2002 (attached as Attachment 10).

BellSouth has provided conflicting explanations regarding the reasons for these discrepancies. During workshops in Louisiana, BellSouth stated that CLECs cannot replicate the values in the PARIS reports because those reports reflect adjustments and interest. However, on other occasions, BellSouth advised AT&T that its payments would not match the PARIS reports because, unlike the remedy payments, the PARIS reports *do not* include adjustments and interest. BellSouth's conflicting explanations, as well as the discrepancies in its reports, illustrate that BellSouth's PARIS reports are unstable, unreliable, and inaccurate.

**D. General Data Integrity Issues.**

41. As a result of recent discovery in proceedings conducted in Tennessee, as well as information that BellSouth has provided in other contexts, AT&T has discovered that BellSouth has improperly implemented the business rules governing any number of metrics. These errors have manifested themselves in a variety of ways including, *inter alia*, BellSouth's improper exclusion and inclusion of transactions when calculating performance results. A performance measurement serves no useful purpose unless it accurately captures the performance it is intended to measure. Unfortunately, BellSouth has manipulated its performance measures in ways that can skew its actual performance. Set forth below are a few examples of these data integrity problems.

42. **LNP Flow-Through.** During discovery in Tennessee, BellSouth admitted that LNP LSRs which may have been clarified by a BellSouth service representative or that fall out for manual processing are included in the LNP Flow-Through Auto-Clarifications field. However, BellSouth's classification of an LSR that is clarified by a service representative or that falls out for manual processing as an "auto-clarified" LSR is flatly inconsistent with the SQM.

The SQM states that, an Auto-Clarification is an LSR that is “electronically rejected” and “electronically returned” to the CLEC. Varner Aff., Exhibit PM-1C Appendix B-1. Thus, under BellSouth’s own SQM, an LSR that is clarified or falls out for manual handling cannot properly be classified as an Auto-Clarification.

43. **Completion Notice Interval.** Other evidence shows that BellSouth’s data cannot be trusted. In its comments on BellSouth’s Georgia/Louisiana application, AT&T pointed out that BellSouth’s performance results are inaccurate because BellSouth improperly excludes completion notices when orders are completed in one month, but the completion notice is issued in another. Bursh/Norris Reply Decl. ¶ 53, Bursh/Norris Supp. Reply Decl. ¶ 25. In its May 23 Notice filed before the GPSC, BellSouth represented that these completion notices were “included effective with April data.” May 23 Notice, Attachment at 2. However, on that same day, BellSouth submitted responses to Consolidated CLEC 1<sup>st</sup> Data Requests in Docket No. 97-00309 before the Tennessee Regulatory Authority in which it stated that it expected to include such orders “with July 2002 data.”<sup>14</sup> These inconsistencies in BellSouth’s publicly-filed documents illustrate that no solace can or should be taken that BellSouth’s representations regarding its implementation of performance measures can be trusted.

44. **Rejected LSRs – Total Mechanized.** BellSouth unilaterally determines the performance data it reports by applying undocumented exclusions to the data files. In order to provide meaningful information, performance measurements must be clearly defined and implemented properly. Furthermore, in order for performance measurements to capture

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<sup>14</sup> BellSouth’s Response to Item No. 21, Consolidated CLEC 1<sup>st</sup> Data Requests, dated May 23, 2002, Tennessee Regulatory Authority Docket No. 97-00309 (attached as Attachment 11).

accurately the performance they are intended to measure, the performance measurement plan should measure all transactions during the reporting period and include a complete and accurate explanation of the data used to calculate the performance results, the business rules that are applicable, a description of the data excluded from any calculation, the formula for calculating metrics results, and definitions of all relevant terms. However, in calculating performance results, BellSouth has applied exclusions which are nowhere documented in BellSouth's SQM or the Raw Data User Manual. BellSouth's application of undocumented exclusions renders it impossible for the CLECs and the Commission to verify the accuracy of BellSouth's performance reports and makes a mockery of the business rules governing the affected performance measures.

45. For example, the % Rejected LSRs – Total Mechanized measure is designed to provide the percentage of electronically-submitted LSRs that are rejected by BellSouth. In response to a data request in Tennessee, BellSouth admitted that, in calculating the results for this measure, it excludes LSRs for which a product code could not be identified, as well as LSRs for which a state was not identified.<sup>15</sup> These exclusions are not documented in BellSouth's SQM. However, these orders are included in the Total Mechanized LSRs in the Flow-Through Report. As a matter of simple logic, CLECs should be able to verify the accuracy of BellSouth's data by comparing the denominator of the % Rejected LSRs to the total Mechanized LSRs field in the Flow-Through Report. Because BellSouth relies upon undocumented exclusions and unpublished business rules, it is impossible for CLECs to perform

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<sup>15</sup> BellSouth's Response to Item No. 29, Consolidated CLEC 1<sup>st</sup> Data Requests, dated May 23, 2002, Tennessee Regulatory Authority Docket No. 97-00309 (attached as Attachment 11).



comparative analysis using the % Rejected-LSRs-Total Mechanized Data reported on PMAP and the Total Mechanized LSRs in the Flow-Through Report.

46. **LNP LSRs with Status Notices After the Data Snapshot.** During discovery in State proceedings, BellSouth revealed that LSRs received by the LNP Gateway in the reporting month, but which receive a Clarification or FOC after the “snapshot of data is taken,” are not reported in the LNP Flow-Through Report for Total Mechanized LSRs.<sup>16</sup> These rules are not documented in BellSouth’s SQM. Furthermore, the details regarding BellSouth’s application of these exclusions remain unclear. BellSouth has not revealed precisely when the “snapshot of data” is taken or whether the excluded LSRs are captured in BellSouth’s performance data in subsequent months.

47. **LSRs Received in Previous Months.** BellSouth has also admitted in discovery that LSRs received in previous months are excluded from the Flow-Through Report and the LNP Flow-Through Report.<sup>17</sup> Additionally, it is unclear whether these LSRs are not reported at all or whether they are reported in a subsequent month. In all events, these exclusions are not documented in the SQM.

48. **Transactions Handled by CRSG.** BellSouth also fails to report many of the transactions handled by the Complex Services Resale Support Group (“CRSG”). The CRSG, which is an extended branch of BellSouth’s Account Team/CLEC Care Team, processes CLEC requests for Complex Resale and Complex UNE products. In response to discovery in

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<sup>16</sup> BellSouth’s Response to Item No. 30, Consolidated CLEC 1st Data Requests, TRA Docket No. 97-00309, May 23, 2002 (attached as Attachment 11).

<sup>17</sup> *Id.*, Response to Item No. 31.

Tennessee, BellSouth stated that LSRs submitted to the CRSG “are currently reported in BellSouth’s SQM in the Non-Mechanized categories for Percent Rejected Service Requests, Reject Interval, Firm Order Confirmation Timeliness, and Firm Order Confirmation and Reject Response Completeness under the following products: Resale Design (Specials), UNE Loop + Port Combinations, xDSL, Interoffice Transport.”<sup>18</sup> BellSouth further stated that xDSL and Local Interoffice Transport are also reported for LSR Firm Order Confirmation Response Time – Manual. *Id.*

49. However, BellSouth’s response during discovery in Tennessee is inconsistent with its prior response to an exception during the Florida OSS test. KPMG issued Exception 90 in the Florida OSS test because it did not receive timely Non-Mechanized FOCs from BellSouth *via* fax and electronic mail. In its response, BellSouth stated that orders issued by the CRSG are excluded from Measure 0-9 of the SQM which measures FOC Timeliness for Non-Mechanized LSRs.<sup>19</sup> This statement directly contradicts BellSouth’s response to discovery in which BellSouth stated that LSRs submitted to the CRSG are currently reported in the Non-Mechanized category for FOC Timeliness.

50. In its response to Exception 90 in Florida, BellSouth also stated that LSRs for xDSL and unbundled interoffice transport that are submitted to the CRSG and require a Service Inquiry are measured under Measure 0-10 of the SQM which measures Service Inquiry with LSR FOC response Time Manual. *Id.* at 12. Based upon this response, it appears that

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<sup>18</sup> BellSouth Response to Item No. 25, Consolidated CLEC 1<sup>st</sup> Data Requests, TRA Docket No-97-00309, May 23, 2002 (attached at Attachment 11).

<sup>19</sup> Florida OSS BellSouth’s Response to 3<sup>rd</sup> Amended KPMG Exception 90, dated February 15, 2002 at 4.

orders which are transmitted to the CRSG and do not require a service inquiry or require a service inquiry for services other than xDSL or unbundled interoffice transport are *not* included in BellSouth's FOC timeliness results. However, the exclusion of this category of orders is not documented in the SQM. Moreover, timely FOCs are critical to the CLECs' ability to compete.<sup>20</sup> However, BellSouth's exclusion of orders from its performance results on FOC timeliness renders it impossible to assess BellSouth's actual performance in this area.

51. **Database Accuracy.** BellSouth also excludes "Directory Listing only" service orders from the samples drawn to calculate the % Database Update Accuracy Measure. The % Database Update Accuracy Measure is designed to evaluate whether BellSouth accurately updates its Directory Listing database. According to BellSouth's SQM, the definition of the % Database Update Accuracy measure is as follows:

This report measures the accuracy of database updates by BellSouth for Line Information Database (LIDB), Directory Assistance, and *Directory Listings* using a statistically valid sample of LSRs/Orders in a manual review. This manual review is not conducted on BellSouth Retail Orders.

52. However, BellSouth admitted in its response to recent discovery in Tennessee that it does not include "Directory Listing only" service orders in the sampling process for this measure.<sup>21</sup> Thus, this exclusion is contrary to BellSouth's own published business rules.

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<sup>20</sup> See, e.g., *Texas 271 Order*, ¶ 171 (noting that "data demonstrating that [FOCs] are provided in a timely manner is a key consideration for assessing whether competitors are allowed a meaningful opportunity to complete").

<sup>21</sup> BellSouth's Response to Item No. 24, Consolidated CLEC 1<sup>st</sup> Data Requests, TRA Docket No. 97-00309, May 23, 2002 (attached as Attachment 10).

53. **Mean Held Order Interval.** BellSouth's data are unreliable in other important respects. BellSouth generates a Monthly State Summary (MSS) performance report to evaluate BellSouth's performance against parity and benchmark performance standards, including its performance with respect to the Mean Held Order Interval Measure. According to BellSouth's SQM, the held order interval is calculated by determining the average period that CLEC orders are held for BellSouth reasons past the committed due date. Thus, this measure tracks the amount of time that held orders are held and pending, *not* the number of orders that are held and pending. However, BellSouth artificially inflates its performance for this interval measure by using a mean held order interval of zero when there are *no* instances of delayed orders.

54. Indeed, in its response to discovery in Tennessee, BellSouth admitted that it populates the equity column in its MSS report with a "Yes" for the Mean Held Service Interval measure even when there was no activity for that measure.<sup>22</sup> Thus, BellSouth credits itself for a zero Mean Held Service Interval when there were no held orders. BellSouth's approach is nonsensical and contrary to the published business rules governing this measure. By crediting itself with a zero interval even when there were no held orders in the reporting period, BellSouth inappropriately inflates its performance results. Clearly, if there are no held orders for the reporting period, the Mean Held Order Interval field should be blank to reflect that there was no activity during the report period.

55. **OSS Availability.** BellSouth also improperly includes the hours of test servers and back-up servers in its calculations for the Interface Availability Measure, thereby

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<sup>22</sup> BellSouth's Response to Item No. 27, Consolidated CLEC 1<sup>st</sup> Data Reports, TRA Docket No. 97-00309, May 23, 2002 (attached as Attachment 11).

artificially inflating its performance for this measure. The Interface Availability Measure tracks outages that could impact the CLEC's ability to conduct business using BellSouth's interfaces. To place their orders with BellSouth, CLECs must rely upon BellSouth's ordering interfaces (*i.e.* EDI, LENS, and TAG). When these systems are slow or experience outages, the CLECs' ability to order products and services from BellSouth is impeded.

56. The Interface Availability Measure evaluates the percentage of hours that BellSouth's interfaces are available for CLECs to use in conducting business with BellSouth. The calculation is a simple one – the number of hours BellSouth's interfaces are not available divided by the total number of available hours. In proceedings before the Louisiana Public Service Commission, BellSouth admitted that it adds the hours of service that its test and back-up servers are available to the denominator of the Interface Availability Measure calculation. BellSouth's calculations are inaccurate because its test servers and back-up servers are not used to process CLEC orders. By adding the hours its test and back-up servers are running, BellSouth artificially inflates the denominator of the Interface Availability Measure and overstates its performance.

57. **Jeopardy Notice Interval.** BellSouth recently revealed that jeopardy notices which are issued in a different month than the due date are excluded from BellSouth's performance results on jeopardy notice timeliness. This exclusion is not documented in the SQM. Although BellSouth has stated that it will start capturing these orders effective with its April data, its performance results before April which are included in its Application are inaccurate.

58. Against this backdrop, BellSouth cannot legitimately rely on the record developed in the *Georgia/Louisiana 271* proceeding to support its claim that its data are accurate.

Whatever record was developed in that proceeding cannot obscure the fact that AT&T has continued to uncover inconsistencies and discrepancies in BellSouth's performance data, and that BellSouth has utterly failed to abide by its commitment to resolve data integrity issues in a meaningful way.

**E. BellSouth's Admitted Errors in the Data.**

59. During the *Georgia/Louisiana 271* proceeding, AT&T and other CLECs argued that the constant pattern of BellSouth's restatements of data shows that BellSouth's reported results are not sufficiently reliable. The Commission, however, found that BellSouth's data had "shown greater stability in recent months." *Georgia/Louisiana 271 Order* ¶ 19.

60. However, recent events confirm that BellSouth reported data continue to be plagued with errors. For example, AT&T has discovered errors in BellSouth's April 2002 PMAP data. In this regard, BellSouth's final performance data should be posted to the PMAP website by the first day of the month. Because of difficulties encountered in migrating to PMAP 4.0, BellSouth did not post its April 2002 data until June 5. When AT&T downloaded the performance reports, it noticed that the April Percent Missed Installation Appointments report did not include calculations for the percentage of missed appointments. As a result, on June 20, AT&T brought this matter to BellSouth's attention. On June 25, BellSouth transmitted to AT&T a corrected report showing the percentages of installations missed. Notably, BellSouth's corrected report showed significantly *more* missed appointments than the original report that AT&T downloaded from the PMAP website. When AT&T notified BellSouth about this discrepancy, BellSouth stated that both the original report that AT&T downloaded from PMAP and BellSouth's first corrected report were inaccurate. BellSouth explained that these errors

were attributable to a data migration problem relating to the release of PMAP 4.0. On July 1, 2002, BellSouth transmitted to a corrected April report, stating that corrections were made to the calculation fields for the percentage of missed appointments. These incidents provide further confirmation that BellSouth's reporting processes are not sufficiently stable.

61. The errors in BellSouth's performance data are not confined to AT&T's PMAP data. For example, on June 27, 2002, BellSouth notified the Alabama Public Service Commission that it was submitting a revised April 2002 SQM Report "to correct programming errors discovered after the data had been posted" which affected "several reports."<sup>23</sup> As a result of these "programming errors," BellSouth has revised its results for any number of measures including metrics on: OSS Interface Availability; % Rejected Service Requests; Reject Interval; FOC Timeliness; % Missed Installation Appointments; Average Completion Notice Interval; Coordinated Customer Conversions; Hot Cut Timeliness; Hot Cut Average Recovery Time; % Cooperative Testing -xDSL; and Customer Trouble Report Rate.

62. Similarly, in an *ex parte* filed on July 3, 2002, BellSouth submitted MSS Reports for Alabama, Kentucky, Mississippi and North Carolina using PMAP 4.0. In this *ex parte*, BellSouth stated that "a corrupt file has prevented BellSouth from generating accurate data on the Mean Held Orders submetrics and the % Jeopardies submetrics." These examples illustrate that BellSouth's data continue to show signs of instability.

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<sup>23</sup> Letter from Francis B. Semmes to Walter Thomas dated June 27, 2002 (attached as Attachment 12).

**F. KPMG's Third-Party Tests.**

63. Noting that the Commission found in the *Georgia/Louisiana 271 Order* that, BellSouth's performance data had been subjected to multiple metrics audits, BellSouth contends that these same audits support a finding in this proceeding that its data are accurate. *See Varner Aff.*, ¶ 128-129. BellSouth also contends that the Commission should reject, as it did in its *Georgia/Louisiana 271 Order*, any claims that KPMG's audit in Florida confirms that BellSouth's data are unreliable. *Varner Aff.*, ¶ 160. Indeed, BellSouth maintains that, if anything, "the Florida metrics test supports BellSouth's position that its performance data are reliable . . . ." *Varner Aff.* ¶ 162. The Florida metrics test does nothing of the sort.

64. As a preliminary matter, the Florida metrics test is far from complete. In this regard, during the Florida metrics test, many of KPMG's initial evaluations were based upon the PMAP 2.6 environment. However, the metrics audit is now being conducted using PMAP 4.0. KPMG Draft Final Report at VIII Metrics – 3. As Attachment 13 shows, numerous metrics which passed the data integrity tests using PMAP 2.6 must be retested under PMAP 4.0, including measures on Coordinated Customer Conversions, Hot Cuts within Intervals, Service Order Accuracy, Invoice Accuracy, Mean Time to Deliver Invoices, Trunk Group Performance, Collocation, and Change Management .

65. Furthermore, in its Draft Final report, KPMG identified numerous metrics that "could not be tested in the PMAP 2.6 environment because accurate and complete transformation documentation for data between the staging to NODS steps was unavailable." The chart attached as Attachment 14 lists the metrics that KPMG could not test in the 2.6 environment. These metrics include: Acknowledgement Timeliness; Acknowledgement



Completeness; % Rejected Service Requests (LNP) (Trunks); Reject Interval (LNP) (Trunks); FOC Timeliness (Trunks); FOC Intervals (LNP); Percent Missed Appointments (Trunks and Non-Trunks); Average Jeopardy Notice Interval and Percentage of Orders Given Jeopardies; Order Completion Interval; Average Completion Notice Interval; Percentage of Troubles Within 30 Days (Non-Trunks and Trunks); Missed Repair Appointments; Customer Trouble Report Rate; Percentage of Repeat Troubles Within 30 days; and Out of Service Greater than 24 Hours. Indeed, a number of these measures are “key metrics” according to BellSouth.

66. Furthermore, during the Florida metrics test “[t]he Florida Public Service Commission (FPSC) requested that KPMG Consulting conduct a Commercial Data Review which involved a comparison of BellSouth’s commercial data against the Florida Service Quality Measurement standards.” KPMG Report, Appendix G-3. Critically, KPMG found that its “results are based on data produced by BellSouth’s metric systems, the accuracy of which KPMG Consulting has not been able to validate . . .” *Id.* at G-6 (emphasis added). Clearly, BellSouth cannot legitimately contend that the Florida metrics test confirms that its data are accurate and reliable when KPMG has admitted that the lack of adequate documentation precluded it from testing numerous metrics using PMAP 2.6 and stated explicitly that it could not verify the accuracy of BellSouth’s commercial data.

67. Moreover, 19 Observations and Exceptions which relate to deficiencies in BellSouth’s data remain open in Florida. A number of these exceptions have been open for a considerable period of time. For example, KPMG’s Exception 36, which was opened in March 2001 and which found that BellSouth does not construct properly the data used to validate FOC and reject timeliness, still remains open. Similarly, Exception 113, which was opened in October

2001 and which found that BellSouth fails to capture DSL in its flow through report, is still open today.

68. Additionally, Exception 114 (opened in October 2001) and Exception 120 (opened in November 2001) -- which found that BellSouth improperly excludes data used to calculate FOC timeliness and the Percent Rejected Service Requests measure -- remain open. Furthermore, Exceptions 143, 144, and 145 -- which were opened in February 2002 and which found that BellSouth improperly excludes non-mechanized orders between the BARNEY and NODS stages of the PMAP process when calculating results on rejection notices and FOC timeliness -- are still open.

69. Similarly, a number of exceptions relating to KPMG's inability to replicate BellSouth's performance results during the PMR5 test (Metrics Calculation/Replication) are open in Florida. These exceptions are: Exception 124 (finding that KPMG could not replicate the values in BellSouth's flow-through report); Exception 151 (previously Observation 139) (finding that KPMG cannot replicate the values BellSouth reported on completions/attempts without notice or less than 24 hours notice); Exception 153 (finding that KPMG cannot replicate the values reported by BellSouth for the Provisioning LNP Total Service Order Cycle Time Measurement); and Exception 163 (formerly Observation 179) (finding that KPMG cannot replicate the values in the percentage of rejected LNP service requests).

70. In June 2002, KPMG opened two new exceptions in Florida, Exceptions 174 and 175. In Exception 174, KPMG found that the values in the completion date file were inconsistent with the Legacy / Source extracts and corresponding RADS snapshots for the WFAP system for data used in calculating provisioning results. In Exception 175, KPMG found that

BellSouth incorrectly excludes transactions during the transfer of data between the Legacy extracts for the EDI system and the corresponding RADS snapshots.

71. A number of observations relating to the metrics calculation/replication phase of testing are also open in Florida. These observations are as follows:

- Observation 176 (opened in March 2002) found that KPMG cannot replicate the values in the Average Completion Notice Interval.
- Observation 185 (opened in April 2002) found that KPMG cannot replicate the values in results on the percentage of hot cuts completed within the standard interval and the average hot cut interval.
- Observation 195 (opened in April 2002) found that KPMG cannot replicate the reported results in the CLEC aggregate Reject Interval SQM report.
- Observation 200 (opened in May 2002) found that BellSouth's implemented exclusions for measures on the LNP reject interval and percentage of rejection orders were inconsistent with the documented exclusions.
- Observation 204 (opened in June 2002) found that KPMG cannot replicate the values in the FOC SQM for the Test CLEC.
- Observation 206 (opened in June 2002) found that KPMG cannot replicate the values in BellSouth's Mean Held Order Interval results.
- Observation 207 (opened in June 2002) found that BellSouth could not replicate the values BellSouth reported in its Acknowledgment Message Timeliness Report.

72. These exceptions and observations, coupled with KPMG's findings regarding its inability to test metrics using PMAP 2.6 and verify the accuracy of BellSouth's commercial data, belie BellSouth's claims that the Florida metrics test confirms the reliability of its data.

73. It should also be noted that the Georgia metrics audit is not complete. On July 10, 2002, during a status conference call regarding the Georgia metrics test, KPMG advised the parties that, because of incomplete and inaccurate transformation documentation, it could not

test 27 metrics using PMAP 2.6. KPMG also reported that, as a result of these problems, the Georgia metrics audit will be delayed and will not be completed until October 31, 2002.

74. Significantly, on July 10, 2002, KPMG issued a new exception in the Georgia metrics test. In Exception 154, KPMG, which is currently conducting testing using PMAP 4.0, found that "BellSouth incorrectly excludes records during transfer of data between the Legacy extracts for the LMOS system and the corresponding RADS Snapshots for data that go into the calculation of Maintenance and Repair Service Quality Measurements."<sup>24</sup> Noting that all transactions from the Legacy / Source system data should be transferred to the RADS Snapshots without exception, KPMG found that BellSouth improperly excluded 3,902 records between the Legacy extracts and the RADS Snapshots data. This is a serious omission. In describing the impact of these exclusions, KPMG explained that:

CLECs rely on BellSouth's performance measurements to assess the quality of service provided by BellSouth and to plan future business activities. If BellSouth incorrectly excludes records that should be included in calculating the Maintenance and Repair SQMs, the reported values would not be an accurate reflection of the actual quality of service provided. Without accurate and complete data sets, CLECs are unable to assess the quality of service received on plans for future business activities.

75. Thus, neither the Florida metrics audit nor the Georgia metrics audit supports BellSouth's claim that its data are accurate and reliable.

**V. BELLSOUTH'S PERFORMANCE DATA DO NOT DEMONSTRATE SECTION 271 COMPLIANCE.**

76. Even BellSouth's own inadequate performance data show that it has not satisfied its Section 271 obligations. BellSouth's reported results show that BellSouth's

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<sup>24</sup> KPMG GA Exception 154 dated July 10, 2002.

flow-through rates are wholly inadequate, its rejection rates are far too high, its service order accuracy rates are too low, and BellSouth fails to provide timely status notices. BellSouth's data also show that it has failed to meet performance standards during the provisioning, maintenance and repair and billing processes. Examples of BellSouth's performance deficiencies are set forth below.

**A. Regional Data**

77. **Flow-Through.** During the *Georgia/Louisiana 271* proceeding, BellSouth asserted that, as a result of a number of corrective measures that it planned to implement, its flow-through rates should improve. Citing BellSouth's remedial steps, the Commission noted that it fully expected BellSouth's flow-through performance to improve in the future.

*Georgia/Louisiana 271 Order*, ¶ 146.

78. As explained in detail in the Bradbury/Norris Declaration, notwithstanding BellSouth's promises and this Commission's expectations, BellSouth's flow-through performance has shown little or no improvement. Thus, for example, BellSouth's data on its albeit flawed CLEC Error Excluded Rate measure show that, in April 2002, the flow-through rate for residential resale orders was 87.39% -- a rate lower than that in December 2001 (89.59%). Similarly, BellSouth's April 2002 flow-through rate for business resale orders was 71.89% -- a rate lower than that in December 2001 (74.07%). For UNE LSRs, the flow-through rate of 84.70% in April was only slightly higher than the January 2001 rate (80.89%). Moreover, BellSouth's April 2002 flow-through rates failed to meet any of the benchmark standards for this measure for residential resale, business resale and UNE orders.

79. Similarly, BellSouth's Achieved Flow-Through Rates have not improved. BellSouth's aggregate Achieved Flow-Through Rate was 79.54% in January 2001, while the rate for April 2002 declined to 77.51%. Furthermore, BellSouth's April 2002 Achieved Flow-Through Rate for Resale Residential orders was 80.53% -- approximately 5 percentage points lower than the rate in January 2001 (85.70%). In addition, BellSouth's Achieved Flow-Through Rate for business resale orders decreased from 55.52% in December 2001 to 51.15% in April 2002. Although the Achieved Flow-Through Rate for UNEs increased from 68.10% in December 2001 to 75.30% in January 2002, the rate for April 2002 is 74.87% (which is below BellSouth's January 2002 rate). Thus, despite BellSouth's suggestions to the contrary, its flow-through rates have not improved during 2002.

80. True to form, BellSouth, pointing to high flow-through rates for individual CLECs, claims that its flow-through rates are adversely affected by CLEC error. *See* BellSouth Br. at 84-85. This rationalization is meritless. BellSouth's Achieved Flow-Through and CLEC Error Excluded measures already exclude orders attributable to CLEC error.

81. Furthermore, as discussed in the Bradbury/Norris declaration, KPMG found during its third-party test in Florida that BellSouth's flow-through rate was subpar. Noting that BellSouth's UNE flow-through rate was 10 percentage points below the benchmark standard, KPMG found that BellSouth failed to "process UNE order transactions in accordance with published flow-through rates." KPMG Draft Final Report at POP-272-POP-273. For all of these reasons, BellSouth's flow-through rates have shown no real improvement during 2002.

82. **Service Order Accuracy.** This Commission has stated that a BOC's ability to, *inter alia*, 'accurately process manually handled orders' is probative in analyzing a

BOC's ability to provide access to its ordering functions in a nondiscriminatory manner." *Texas 271 Order*, ¶ 179. BellSouth claims that its performance in this area has been "strong."

BellSouth Br. at 5. However, BellSouth's own performance results -- which are based upon a sampling methodology that it developed unilaterally -- show that BellSouth's claims of "strong" performances ring hollow. *See Georgia/Louisiana 271 Order*, ¶ 159 n.575.

83. Even BellSouth concedes that, from January 2002 to March 2002, it met the 95% benchmark standard for less than half of the 32 resale submetrics for which data are reported. *Ainsworth Aff.*, ¶ 215. For example, in February, March and April 2002, BellSouth failed the 95% benchmark for the service order accuracy measure for Resale Design (Specials) dispatch orders consisting of fewer than 10 circuits. In March 2002, the service order accuracy rate for this order category was 81.08% -- a rate well below the 95% benchmark. *See Varner Aff.*, Exhibit PM-27.

84. In January, February, and April BellSouth also failed the 95% benchmark standard for service order accuracy for Resale Design (Specials) non-dispatch orders equal to or greater than 10 circuits. For example, in January and February 2002, the service order accuracy rates for this order category were 70% and 82.35%, respectively. *Varner Aff.* Exhibit PM-27.

85. During five of the ten months for which CLEC data are available, BellSouth failed the 95% service order accuracy benchmark standard for Resale business dispatch orders greater than or equal to 10 circuits. In April 2002, only 77.78% of the orders falling into this order category were accurate -- a rate which is approximately 17 percentage points below

the benchmark standard.<sup>25</sup> With respect to resale orders involving ten or more circuits and requiring a dispatch, the service order accuracy rate was only 88.24% for residential customers in April.

86. For Resale nondispatch business orders greater than or equal to 10 circuits, BellSouth missed the service order accuracy standard from November 2001 through March 2002. *Id.* at A.2.25.2.2. BellSouth has also missed the benchmark standard for UNE orders. For example, in April 2002, for UNE dispatch orders consisting of ten circuits or less BellSouth's service order accuracy rate was only 89.81%. Stacy Aff. Exhibit PM-4.

87. Notably, five order categories that met the service order accuracy benchmark in December 2001 while BellSouth's *Georgia/Louisiana 271* application was pending, missed the benchmark standard in April 2002. The affected service order accuracy submetrics are: Resale Residence < 10 Circuits / Non-Dispatch; Resale Residence > = 10 Circuits / Dispatch; Resale Design (Specials) < 10 Circuits / Non-Dispatch; Resale Design (Specials) > = 10 Circuits / Non-Dispatch; and Loop Non-Design > = 10 Circuits / Dispatch. And, as explained in the Bradbury/Norris Declaration, in May 2002, BellSouth missed seven of eleven resale submetrics and one of seven UNE categories for this measure.

88. As explained in the Bradbury/Norris OSS Declaration, these errors have spawned inaccuracies in provisioning. In its Draft Final Report on its third-party testing in Florida, KPMG found that BellSouth failed to accurately provision CLEC orders. KPMG found that BellSouth did not satisfy test criteria that "switch translations contain required field inputs,"

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<sup>25</sup> It should also be noted that BellSouth's April performance is worse than its performance in December 2001 during which BellSouth reported an accuracy rate of 82.35% for this order category. Varner Aff., Exhibit PM-27.



and that "BellSouth provisioned switch translations and updated customer service records in accordance with the submitted LSRs."<sup>26</sup> Additionally, KPMG concluded that BellSouth's provisioning accuracy rate was subpar with respect to directory listings orders.<sup>27</sup>

89. **OSS Pre-Ordering.** With respect to a number of submetrics for the Average Response Interval measure, BellSouth's performance has shown no real improvement since December 2001. Thus, for example, two submetrics that met the parity standard for the Average Response Interval  $\leq 4$  Seconds measure in December 2001 failed the standard in April 2002.<sup>28</sup> Eight submetrics that failed the parity standard in December 2001 still failed in April 2002.<sup>29</sup>

**B. Mississippi**

**1. Ordering**

90. **Rejection Rates.** A CLEC operates at a significant competitive disadvantage if high percentages of its orders are rejected by BellSouth. Rejection of an order requires the CLEC to resubmit the order, which in turn, results in increased costs and delay in the provisioning of the order.

91. BellSouth's rejection rates are unacceptably high. For example, from January through March 2002, over one-third of all resale partially-mechanized business orders submitted by the CLECs were rejected by BellSouth's systems. Similarly, from January through

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<sup>26</sup> KPMG Draft Final Report at Provisioning-58, Provisioning-59.

<sup>27</sup> *Id.* at Provisioning-15, Provisioning-17, Provisioning-72, Provisioning-73.

<sup>28</sup> These submetrics are (D.2.4.11) (OSS-N1W / Region) and (D.2.4.3) (OSS-DLR / Region).

<sup>29</sup> These metrics are: D.2.4.4; D.2.4.5; D.2.4.6; D.2.4.8; D.2.5.5; D.2.5.8; D.2.6.5; and D.2.6.8.

March 2002, the rejection rates for resale residential partially-mechanized orders submitted by CLECs were close to 30%. Furthermore, in February 2002, the rejection rate for resale design non-mechanized orders was 27.03%; and, in March 2002, the rejection rate for this category of orders increased to 36.62%.<sup>30</sup> Additionally, the rejection rates for resale partially-mechanized business orders submitted by CLECs were 39.92%, 44.61%, and 33.86% in January, February and March 2002. *Id.* A.1.2.2

92. The rejection rates for UNE orders fared no better. From January through March 2002, the rejection rates for Loop and Port Combination partially-mechanized orders were 24.10%, 30.67%, and 36.20%. *Id.* at B.1.2.3. And, during that same period, the rejection rates for partially-mechanized 2W Analog Loop Design orders were 54.17%, 46.43%, and 21.43%.

93. In its Application, BellSouth, noting that particular CLECs achieve low rejection rates, suggests that its overall rejection rates are attributable to CLEC errors resulting from “major turnover in personnel.” Varner Aff., Exhibit PM-4 (Mississippi) at 17. Importantly, during its third-party testing of BellSouth’s OSS in Florida, KPMG found that BellSouth did not “provide accurate and complete Error (ERR)/ Clarification (CLR) messages.” KPMG Draft Final Report, POP-66 (TVVI-2-2). As a result of these findings, KPMG issued Exception 165 on June 3, 2002, finding that 17% of BellSouth’s rejection notices are inaccurate. Indeed, KPMG found that, although BellSouth had issued rejection notices, it found “in some cases there was no error on the LSR.”<sup>31</sup> KPMG’s finding thus highlights the paucity of BellSouth’s claim that its rejection rates are solely attributable to CLEC error.

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<sup>30</sup> *Id.* at A.1.3.3.

<sup>31</sup> KPMG Florida Exception 165, dated June 3, 2002.

94. **Rejection Notice Intervals.** BellSouth's MSS reports include measures that examine BellSouth's performance in delivering timely rejection notices to CLECs. The results for these measures are disaggregated by product and interface type (*i.e.* mechanized, partially mechanized and non-mechanized). This Commission has held that "[t]imely delivery of order rejection notices directly affects a competing carrier's ability to service its customers, because such carriers are unable to correct errors and resubmit orders until they are notified of their rejection by BellSouth." *Second Louisiana 271 Order* ¶ 118. However, BellSouth's own performance data show BellSouth is not providing timely rejection notices.

95. In this regard, for orders submitted electronically, BellSouth is required to return 97% of its rejection notices within one hour. However, BellSouth has failed to meet this benchmark standard. For example, BellSouth failed to meet the benchmark standard for the timely issuance of rejection notices for mechanized UNE Other Non-Design orders in January, February and March 2002. *Id.* at B.1.4.15. Indeed, in March 2002, only 70.59% of the orders in this UNE product category met the benchmark standard -- a rate well below the 97% benchmark standard.

96. For UNE Other Design orders, BellSouth failed to meet the 97% reject interval standard in September 2001, December 2001, January 2002 and March 2002. *Id.* at B.1.4.14. For example, in March 2002, approximately 78% of the orders falling within this product category met the benchmark standard. *Id.*

97. The reject intervals for UNE 2W Analog Loop Design orders have also fallen short of the mark. BellSouth missed the performance standard for this category of orders from October 2001 through February 2002. *Id.* at B.1.4.8. During this period, the percentage of

UNE mechanized orders within this category that had timely rejection notices returned within the one hour interval ranged from a low of 75% to a high of 95.24%. *Id.*

98. Furthermore, from April 2001 through March 2002, in every month except April 2001 and September 2001, BellSouth missed the 97% benchmark standard when returning rejection notices for UNE Loop & Port Combination orders. *Id.* at B.1.4.3.

99. Similarly, from August 2001 through March 2002, BellSouth failed to meet the benchmark standard for this measure for every month except January 2002 when processing mechanized Resale business orders. *Id.* at A.1.4.2. During eleven of the past twelve months from April 2001 through March 2002, BellSouth failed to meet the benchmark standard for this measure for mechanized Resale residential orders. *Id.* at A.1.4.1.

100. In its Application, although BellSouth concedes that it has not met the 97% benchmark standard for rejection notice timeliness for UNE orders, it offers a host of excuses for its performance failures. BellSouth states that an (unidentified) number of LSRs did not meet the one-hour benchmark because: (1) a number of these LSRs were submitted when back-end legacy systems were out of service and the discrepancies between a coding change in PMA and timestamps used by EDI and TAG resulted in BellSouth improperly adding an hour “during timestamp ‘synchronization;’” (2) in changing the timestamp from the Local Exchange Ordering System to the CLEC ordering interface system, “BellSouth was temporarily unable to identify multiple issues of the same version of LSRs that are fatally rejected, which should be excluded from the measurement;” and (3) a LESOG application defect adversely affected the Reject Interval results. Varner Aff., Exhibit PM-4 at 19-20. Additionally, BellSouth claims that fixes that it implemented with its February and April data should resolve the synchronization and

timestamp problems, and that a fix to be implemented in June should resolve the LESOG application problem. If anything, BellSouth's excuses reveal that its performance monitoring and reporting processes are not sufficiently stable at this time.

101. It should also be noted that, during the *Georgia/Louisiana 271* proceeding, BellSouth represented that it "has fixed problems identified in its GA LA Application with" the metric an Reject Interval Timeliness. *Georgia/Louisiana 271 Order*, ¶ 19 n.69. Presumably, these fixes should have eliminated errors in BellSouth's performance data and improved performance results. Clearly, they did not. BellSouth's own April performance results show that it is still failing to meet the benchmark standard for rejection notice timeliness. For example, in April 2002, BellSouth missed the performance standard for rejection notice timeliness for five of the nine submetrics for which data are reported on this measure for UNEs.<sup>32</sup> Thus, whatever fixes BellSouth has implemented to date have not eliminated its performance failures on this measure.

102. Additionally, although BellSouth's Application indicates that LSRs were adversely affected by a LESOG application defect that will not be fixed until June, BellSouth has failed to quantify precisely what impact this alleged problem had on performance results. In any event, these statements are nothing more than unfulfilled promises which are entitled to no weight in the context of this proceeding.

## **2. Provisioning**

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<sup>32</sup> Varner Aff., Exhibit PM-4 (Mississippi), Attachment 6 at 13. In April, BellSouth missed the benchmark standard for rejection notice timeliness for: mechanized Loop and Port Combinations; 2W Analog Loop Non-Design; 2W Analog Loop with INP Design; UNE Other Design; and ISDN Loop orders. During April 2002, BellSouth also missed the benchmark for this measure for Resale business orders. *Id.* at 1.

103. **Missed Installation Appointments.** As this Commission has recognized, “BellSouth is held accountable by the Missed Installation Appointments metric for instances when BellSouth - caused jeopardies result in missed due dates.” *Georgia/Louisiana 271 Order* ¶ 156 (footnote omitted). In that connection, “the ‘missed appointments’ metric that the Commission typically analyzes demonstrates” that BellSouth has not performed at parity in this area. *Id.* at ¶ 166. For seven months during the period from April 2001 through March 2002, BellSouth failed to meet the parity standard for this measure for Resale residential (nondispatch) orders consisting of fewer than ten circuits.<sup>33</sup>

104. From May 2001 through July 2001 and from September 2001 through February 2002, BellSouth missed the parity standard for this measure for UNE Loop & Port Combination non-dispatch orders consisting of fewer than 10 circuits. *Id.* at B.2.18.3.1.2. Similarly, in July 2001 and from September 2001 through March 2002, BellSouth consistently failed the parity standard for this measure for UNE Loop & Port Combination dispatch orders consisting of fewer than 10 circuits. *Id.* at B.2.18.3.1.4.

105. **Provisioning Troubles Within 30 Days.** CLECs have experienced more provisioning troubles within 30 days of installation than those experienced by retail customers. From January 2002 through March 2002, Resale business dispatch orders consisting of fewer than 10 circuits experienced more provisioning troubles within 30 days of installation than those

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<sup>33</sup> BellSouth missed the parity standard for this measure on Resale residential (nondispatch) orders consisting of fewer than 10 circuits from June through October 2001 and January and February 2002. *Id.* at A.2.11.1.1.2. In March 2002, BellSouth also missed the parity standard for this measure for Resale business dispatch orders consisting of fewer than 10 circuits. *Id.* at A.2.11.2.1.1. In February 2002, BellSouth missed the parity standard for this measure for Resale Design (Specials) dispatch orders consisting of fewer than 10 circuits. *Id.* at A.2.11.3.1.1.

experienced by retail orders. *Id.* at A.2.12.2.1.1. For example, in February 2002, Resale business orders requiring a dispatch experienced more than four times as many installation troubles than retail orders (*i.e.* 14.89% v. 3.49%). In March 2002, while only 3.34% of the retail orders experienced installation troubles, 10.42% of the Resale business dispatch orders consisting of fewer than 10 circuits experienced such troubles. *Id.*

106. Similarly, from January 2002 through March 2002, BellSouth failed to meet the parity measure for this measure for UNE Digital Loop dispatch orders  $\geq$  DS1  $<$ 10 circuits. *Id.* at B.2.19.19.1.1. For example, in February 2002, no retail orders experienced troubles within 30 days of installation, while 25% of UNE Digital Loop dispatch orders  $\geq$  DS1  $<$ 10 circuits experienced such troubles. In March 2002, although only 0.45% of retail orders experienced installation troubles, 8.70% of UNE Digital Loop dispatch orders  $\geq$  DS1  $<$ 10 circuits experienced such troubles.<sup>34</sup>

107. BellSouth concedes that it failed to meet the parity standard for this measure for six submetrics for UNE Loop and Port Combination orders. Varner Aff., Exhibit PM-4 at 26. In an effort to diminish the significance of these failures, BellSouth contends that, as to three of the six submetrics, “a significant number of the reports were closed as ‘no trouble found.’” *Id.* BellSouth’s rationalization cannot withstand scrutiny. BellSouth has provided no empirical data regarding the percentages of its trouble reports were closed as “no trouble found.” Moreover, simply because a Bell technician closed a trouble report as “no trouble found” does not

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<sup>34</sup> BellSouth also failed to satisfy the parity standard for this measure for UNE Loop & Port Combination dispatch orders consisting of fewer than 10 circuits. BellSouth failed to meet the standard for this product category in January 2002 and March 2002. *Id.* at B.2.19.3.1.4.

mean that the trouble report was somehow invalid. Indeed, the BellSouth technician could have closed the report erroneously or the trouble could well have been intermittent.

108. **Jeopardy Notices.** BellSouth's data show that a greater percentage of CLEC orders are placed in jeopardy than retail orders. From January 2002 through March 2002, BellSouth missed the parity standard for the % jeopardies mechanized measure for Resale residential orders. *Id.* at A.2.4.1.

109. In February and March 2002, BellSouth missed the parity standard for this measure for mechanized UNE ISDN orders, (*id.* at B.2.5.6) and 2W UNE Analog Loop-Non-Design orders (*id.* at B.2.5.9). Additionally, BellSouth's own data show that in eight of the 11 months for which CLEC data are reported, BellSouth failed to perform at parity for this measure for UNE Digital Loop  $\geq$  DS1 orders. *Id.* at B.2.5.19. For example, in January 2002, approximately 7% of retail orders were placed in jeopardy, while approximately 56% of UNE Digital Loop  $\geq$  DS1 orders were in jeopardy. In February 2002, although approximately 7% of retail orders were in jeopardy, approximately 77% of Digital Loop  $\geq$  DS1 orders were in jeopardy. And in March 2002, approximately 4% of retail orders were in jeopardy, as compared with approximately 86% of Digital Loop  $\geq$  DS1 orders that were in jeopardy. *Id.*

110. **Completion Notices.** BellSouth has not met the parity standard for the average completion notice interval measure for mechanized orders. From January 2002 through March 2002, it missed the parity standard for this measure for 2W Analog Loop Design Dispatch orders consisting of fewer than 10 circuits. *Id.* at B.2.21.8.1.1. For example, in January 2002, the average completion notice interval for retail orders was 1.51 hours, while the interval for the 2W Analog Loop Design  $< 10$  Circuits Dispatch orders was 8.34 hours. In March 2002, the



average completion notice interval for retail orders was 1.57 hours, while the interval for the 2W Analog Loop Design orders was over 26 hours. *Id.*<sup>35</sup>

### 3. Maintenance and Repair

111. **Trouble Report Rates.** The Commission has repeatedly stated that a BOG “must provide competitors with equivalent access to all repair and maintenance OSS functions that [the BOC] provides itself.” *Second Louisiana 271 Order*, ¶ 145. BellSouth has not met its statutory obligations in the area of maintenance and repair. From June 2001 through March 2002, BellSouth failed to meet the parity standard for customer trouble report rates for Resale Design (Specials) Dispatch orders. During most of these months, the customer trouble report rates for this category of orders were twice as high as those for retail customers. *Id.* at A.3.2.3.1. Similarly, the customer trouble reports for Resale PBX dispatch orders have been higher than those for retail orders. BellSouth missed the parity standard for this category of orders from April 2001 through September 2001, November 2001 through January 2002, and in March 2002. *Id.* at A.3.2.4.1.<sup>36</sup>

112. In addition, the customer trouble report rates for UNE Other Non-Design Dispatch orders have been higher than those for retail orders. BellSouth missed the parity

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<sup>35</sup> BellSouth concedes that it missed “three of the six retail analog comparisons with CLEC activity in January through March 2002” for the SL1 (2W Analog Loop non-design) and SL2 (2W Analog Loop design) group. Varner Aff. Exhibit PM-4 (Mississippi) at 50. BellSouth contends, however, that, these performance results are essentially meaningless because these failures were associated with measures with low order volumes. However, BellSouth also has no difficulty touting its performance when it meets the performance standards for performance measures with low order volumes.

<sup>36</sup> In March 2002, BellSouth missed the parity standard for this measure for Resale Design (Specials) Non-Dispatch orders (*id.* at A.3.2.3.2.) and for Resale PBX/Non-Dispatch orders (*id.* at A.3.2.4.2.).

standard for this category of orders in November 2001, December 2001, January 2002, and March 2002. *Id.* at B.3.2.11.1. For example, in March 2002, approximately 2% of BellSouth's retail orders experienced troubles, while over 19% of UNE Other Non-Design Dispatch orders experienced such troubles. *Id.*

113. BellSouth also failed to meet the parity standard for this measure for UNE Other Non-Design/Non-Dispatch orders. BellSouth failed to meet the parity standard for this category of orders in August 2001, October 2001, and from January 2002 through March 2002. *Id.* at B.3.2.11.2. For example, in February 2002, this category of UNE orders experienced over eleven times as many troubles as retail orders.

114. In its Application, BellSouth concedes that is missed of the 36 Resale measures submetrics for the customer trouble report rate. Varner Aff. Exhibit PM-4 (Mississippi) at 72. In an effort to dismiss the importance of these failures, BellSouth contends that "a large number were closed as 'no trouble found.'" The mere fact that a Bell technician closed a trouble report with a finding of "no trouble found" is not conclusive evidence that the trouble report was invalid.

#### **4. Billing**

115. BellSouth concedes that it failed five of the nine submetrics for the Non-Recurring Charge Completeness measure from January through March 2002. Varner Aff., Exhibit PM-4 (Mississippi) at 31. BellSouth also admits that it failed to meet the 90% benchmark standard in January, February, and March 2002 because of back-billed OSS charges applied to CLEC accounts" and "problems encountered in completing some service orders in a timely manner." Varner Aff., Exhibit PM-4, ¶ 72. Although BellSouth states that it is currently

conducting a root cause analysis regarding these late completed service orders and plans to implement an initiative so that OSS charges are billed on a current basis in order to improve its performance, these are nothing more than unfulfilled promises that are entitled to no weight.

**C. Alabama**

**1. Ordering**

116. **Rejection Rates.** The rejection rates in Alabama are far too high. For example, during the period from April 2001 through March 2002, BellSouth's rejection rates for Resale Residential partially-mechanized orders ranged from a low of 21.62% to a high of 39.46%. *Id.* at A.1.2.1. For Resale business partially-mechanized orders, the rates were even higher. From April 2001 through March 2002, the rejection rates for this category of orders ranged from a low of 39.72% to a high of 55.56%. In March 2002, the rejection rate for this category of orders was 48.15%. *Id.* at A.1.2.2.

117. The rejection rates for UNEs are also quite high. In January 2002, 25.42% of 2W Analog Loop Design orders were rejected. Varner Aff., Exhibit PM-2, Attachment 1 at 12. In February 2002, the rejection rate for this order category increased to 43.53%. Varner Aff., Exhibit PM-2, Attachment 2 at 12. In March 2002, 38.89% of 2W Analog Loop Design orders were rejected. Varner Aff., Exhibit PM-2, Attachment 3 at 12.

118. Similarly, in January 2002, approximately 21% of Loop and Port Combination orders were rejected. Varner Aff., Exhibit PM-2, Attachment 1 at 12. In February, the rejection rate for this category of orders was 18.28%. Varner Aff., Exhibit PM-2, Attachment 2 at 12.

119. For UNE Other Non-Design orders, the rejection rate was 26.36% in January 2002. Varner Aff., Exhibit PM-2, Attachment 1 at 12. In February, the rejection rate for

this category of orders climbed to 28.16%. Varner Aff., Exhibit PM-2, Attachment 2 at 12. And in March 2002, the rejection rate for this order category increased again to 29.53%. Varner Aff., Exhibit PM-2; Attachment 3 at 12.

120. In an effort to deflect attention from these unacceptably high rejection rates, BellSouth, true to form, attempts to blame the CLECs. Varner Aff., Exhibit PM-2, ¶ 37 at 17. However, KPMG's finding during third-party testing in Florida that BellSouth issues spurious rejection notices belies BellSouth's claims.

121. **Rejection Intervals.** BellSouth has not satisfied benchmark standards for the timely delivery of mechanized rejection notices within a one hour interval. From May 2001 through March 2002, BellSouth consistently failed this measure for Resale residential orders. *Id.* at A.1.4.1. In January and March 2002, BellSouth failed to meet the benchmark standard for rejection notice timeliness for mechanized Resale business orders. *Id.* at A.1.4.2.

122. Similarly, from April 2001 through March 2002, BellSouth failed to meet the benchmark standard for rejection notice timeliness for mechanized UNE Loop & Port Combination orders. *Id.* at B.1.4.3. From November 2001 through March 2002, BellSouth failed to meet the benchmark standard for rejection notice timeliness for mechanized UNE Line-Sharing orders. *Id.* at B.1.4.7.

123. In seven of the past twelve months from April 2001 through March 2002, BellSouth failed to meet the 97% standard for rejection intervals for 2W UNE Analog Loop Design orders. *Id.* at B.1.4.8. For example, in March 2002, approximately 87% of the rejection notices for 2W UNE Analog Loop Design orders were delivered within the standard interval – – 10 percentage points below the standard.

124. In eight of the eleven months for which CLEC data are reported, BellSouth failed to meet the standard for rejection notice timeliness for UNE Other Design orders. *Id.* at B.1.4.14. For example, in March 2002, only approximately 64% of UNE Other Design mechanized orders met the one hour interval -- 33 percentage points below the standard. Similarly, in every month for which CLEC data are reported, BellSouth failed to meet the benchmark standard for rejection notice timeliness for mechanized UNE Other Non-Design orders. *Id.* at B.1.4.15. In this regard, in February and March 2002, fewer than 80% of the mechanized UNE Other-Non-Design orders met the rejection notice interval benchmark. *Id.*

**2. Provisioning**

125. **Installation Appointments.** BellSouth has not met parity standards when meeting installation appointments for CLECs. In January and March 2002, BellSouth failed to meet the parity standard with respect to the measure on the percentage of missed appointments for Resale business dispatch orders consisting of ten or less circuits. *Id.* at A.2.1.2.1.

126. Furthermore, BellSouth's performance in meeting the parity standard for missed appointments for UNE orders has been subpar. In January and February 2002, BellSouth missed the parity standard for this measure for UNE Loop & Port Combination non-dispatch and dispatch orders consisting of fewer than 10 circuits. *Id.* at B.2.18.3.1.

127. From November 2001 through March 2002, BellSouth failed to perform at parity in meeting installation appointments for UNE Digital Loop dispatch orders greater than or equal to DS1 and consisting of fewer than 10 circuits. *Id.* at B.2.18.19.1. For example, in March 2002, although BellSouth missed only 1.24% of its installation appointments for retail orders, it

missed 10.53% of the installation appointments for UNE Digital Loop  $\geq$  DS1  $<$  10 circuits/Dispatch orders. *Id.* at B.2.18.19.1.

128. **Provisioning Troubles Within 30 Days.** CLEC customers have experienced more provisioning troubles within 30 days of installation than those experienced by retail customers. From December 2001 through February 2002, BellSouth missed the parity standard for this measure for UNE Loop & Port Combination  $<$  10 circuits / Dispatch orders. And, from October 2001 through March 2002, BellSouth missed the parity standard for this measure for UNE Loop & Port Combination /  $<$  10 circuits / Non-Dispatch orders. *Id.* at B.2.19.3.1. From November 2001 through March 2002, BellSouth met the parity standard only once (in January 2002) for Loop & Port Combinations/  $<$  10 circuits / Non-Dispatch orders. *Id.* at B.2.19.3.1.

129. BellSouth concedes that, from January through March 2002, it failed 13 of the 35 Resale submetrics with CLEC activity for this measure. Varner Aff., PM-2, ¶ 196. Thus, for example, in 10 of the 12 months during the period from April 2001 through March 2002, BellSouth failed to meet the parity standard for this measure for Resale residential non-dispatch orders consisting of fewer than 10 circuits.<sup>37</sup>

130. Similarly, from December 2001 through February 2002, BellSouth failed the parity standard for this measure for Resale business dispatch orders consisting of fewer than 10 circuits. *Id.* at A.2.12.2.1. From November 2001 through January 2002 and in March 2002, BellSouth failed to perform at parity on this measure for Resale business nondispatch orders consisting of fewer than 10 circuits. *Id.* at A.2.12.2.1.

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<sup>37</sup> Alabama MSS Charts – April 2001-March 2002 (A.2.12.1.2.).

131. From June 2001 through March 2002, BellSouth missed the parity standard for provisioning troubles for UNE Digital Loop  $\geq$  DS1  $<$  10 circuits / Dispatch orders. *Id.* at B.2.19.19.1. Although BellSouth contends that a number of these trouble reports were closed as “no trouble found” (*id.* ¶ 151), the mere fact that a BellSouth technician closed out a report as a “no trouble found” is not dispositive proof that the trouble report was somehow invalid.

132. **Completion Notices.** BellSouth has not performed at parity with respect to completion notice intervals. From September 2001 through February 2002, BellSouth failed to meet the parity standard for average completion notice intervals for mechanized 2W Analog Loop Design /  $<$  10 circuits / Dispatch orders. *Id.* at B.2.21.8.1.

133. From December 2001 through March 2002, BellSouth also failed to perform at parity for this measure for mechanized UNE 2W Analog Loop with LNP Design /  $<$  10 circuits / Dispatch orders. *Id.* at B.2.21.12.1. For example, in February 2002, the average completion notice interval for retail orders was 1.24 hours, while the interval was 14.34 hours for mechanized UNE 2W Analog Loop with LNP Design /  $<$  10 circuits / Dispatch orders (resulting in a z-score of  $-4.7763$ ). In March 2002, BellSouth’s performance deteriorated further. During that month, the average completion notice interval for retail orders were 1.35 hours, while the interval was approximately 30 hours for 2W UNE Analog Loop with LNP Design /  $<$  10 circuits / Dispatch orders (resulting in a z-score of  $-8.5653$ ). *Id.* at B.2.21.12.1.

134. **Jeopardy Notices.** BellSouth has failed to meet the parity standard for the measure of the percentage of orders placed in jeopardy. For example, in February and March 2002, BellSouth failed to meet the parity standard for this measure for mechanized Resale residential orders. *Id.* at B.2.4.1.

135. From January 2002 through March 2002, BellSouth placed a greater percentage of 2W UNE Analog Loop Design orders at jeopardy than it placed its own retail orders. *Id.* at B.2.5.8. For example, in March 2002, while only 0.45% of retail orders were placed in jeopardy, over 6% of 2W UNE Analog Loop Design orders were placed in jeopardy.

136. Similarly, in January 2002 and March 2002, BellSouth failed to meet the parity standard for jeopardy notices for 2W UNE Analog Loop with LNP Design orders. *Id.* at B.2.5.12. Furthermore, from October 2001 through March 2002, BellSouth failed to perform at parity with respect to jeopardy notices issued for UNE Digital Loop  $\geq$  DS1 orders. *Id.* at B.2.5.19.

137. In March 2002, BellSouth failed to meet the 95% benchmark standard for the percentage of jeopardy notices delivered greater than or equal to 48 hours for mechanized UNE ISDN orders (*id.* at B.2.10.6) and UNE Digital Loop  $<$  DS1 orders (*id.* at B.2.10.18).

### **3. Maintenance and Repair**

138. **Trouble Report Rates.** The trouble report rates for CLEC orders have been higher than those for retail orders. From August 2001 through March 2002, BellSouth missed the parity standard for customer trouble report rates for Resale residential dispatch orders. *Id.* at 3.2.1.1. From May 2001 through March 2002, BellSouth also missed the parity standard for this measure for Resale Design (Specials) Dispatch orders. *Id.* at A.3.2.3.1.

139. Similarly, from December 2001 through February 2002, BellSouth missed the parity standard for this measure for Resale PBX dispatch orders. *Id.* at A.3.2.4.1. In February and March 2002, it missed the parity standard for this measure for Resale ISDN dispatch orders. *Id.* at A.3.2.6.1.



140. BellSouth also failed to perform at parity on this measure for Resale residential dispatch orders. BellSouth missed the parity standard for this category of orders from September 2001 through March 2002. *Id.* at A.3.2.1.1. From May 2001 through March 2002, BellSouth consistently has missed the parity standard for customer trouble report rates for Resale Design (Specials) Dispatch orders. *Id.* at A.3.2.3.1.

141. Additionally, the customer trouble report rates for certain UNE product categories have been higher than those for retail orders. In December 2001, January 2002, and March 2002, BellSouth missed the parity standard for customer trouble report rates for UNE ISDN dispatch orders. *Id.* at B.3.2.6.1.

142. From November 2001 through February 2002, BellSouth missed the parity standard for this measure for UNE Line Sharing nondispatch orders. *Id.* at B.3.2.7.2. In an effort to diminish the significance of these failures, BellSouth claims that “[o]ver 70% of the reported troubles were closed to no trouble found.” Varner Aff., Exhibit PM-2 ¶ 119. However, the closure of a report with a no trouble found code is not incontrovertible evidence that the trouble report was not legitimate.

#### **4. Billing**

143. **Recurring Change Completeness - UNE.** BellSouth concedes that it failed to meet one of three Recurring Change Completeness UNE submetrics during January through March 2002. Varner Aff., Exhibit PM-2 ¶ 70. BellSouth notes that it failed to satisfy the performance standard because of back-billed OSS charges and difficulties in “correcting service order errors in a timely manner.” *Id.*, ¶ 73. Although BellSouth claims that it has taken certain

remedial steps to ensure that these performance misses do not occur in the future, these are simply paper promises of no probative value. *See, id.*

**D. North Carolina**

**1. Ordering**

144. **Rejection Rates.** The rejection rates in North Carolina are also unacceptably high. In January, February, and March 2002, the rejection rates for Resale business partially-mechanized orders were 33.42%, 54.37% and 46.48%, respectively.<sup>38</sup> Varner Aff., Exhibit PM-5, Attachment 1. In March, the rejection rate for xDSL orders was 48.11%, and the rejection rate for Analog Loop Design orders was 25.41%.

145. **Rejection Intervals.** BellSouth has failed to meet the benchmark standard for rejection notice timeliness. In March 2002, BellSouth failed to meet the one-hour benchmark for 7 UNE (mechanized) product categories.<sup>39</sup> In March 2002, only 42.86% of UNE line sharing rejection notices met the one hour interval. In April 2002, 80% of the rejection notices for this product category met the benchmark standard -- 17 percentage points below the 97% standard. Varner Aff., Exhibit PM-5, Attachment 6.

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<sup>38</sup> During this same period the rejection rates for Resale Residential partially-mechanized orders were 21.26%, 19.98%, and 23.92%, respectively. *Id.* at A.1.2.1.

<sup>39</sup> *See* Varner Aff., Exhibit PM-5, Attachment 3. BellSouth contends that its performance on the Reject Interval measure in North Carolina shows "strong performance." Varner Aff; Exhibit PM-5, ¶ 39. However, BellSouth's analysis inappropriately aggregates data to mask performance. For example, BellSouth ignores the product disaggregations ordered by the State commissions and adds all fully mechanized rejections and partially mechanized rejections. A complete review of the data, however, reveals that in March BellSouth failed this measure for 7 of 10 categories for UNEs (B.1.4).

146. BellSouth also has failed to meet the one-hour benchmark for mechanized UNE 2W Analog Loop Design (mechanized) orders. Indeed, in January 2002, BellSouth missed the 97% benchmark standard for this product category by approximately 12 percentage points. In February 2002, BellSouth missed the benchmark standard for this category of orders by approximately 10 percentage points. *Id.* at B.1.4.8. And in April 2002, only 83% of the rejection notices for this product category met the benchmark standard – 14 percentage points below the benchmark standard. *Id.* at B.1.4.8.

147. Additionally, BellSouth failed to meet the one-hour benchmark standard for returning timely rejection notices for mechanized UNE Other Design orders. *Id.* at B.1.4.14. In this regard, during January 2002, BellSouth failed to meet the 97% benchmark standard for this category of orders by approximately 14 percentage points; and in February 2002, BellSouth returned timely rejection notices for only 70.37% of the orders in this category – approximately 27 percentage points below the benchmark standard. In March 2002, BellSouth failed the benchmark standard for this same category of orders by approximately 16 percentage points. In April 2002, BellSouth returned timely rejection notices for only 69.23% of the orders falling within this category – approximately 18 percentage points below the benchmark standard.

148. BellSouth also failed to meet the 97% benchmark standard for returning timely rejection notices for mechanized UNE Other Non-Design orders'. *Id.* at B.1.4.15. Indeed, in February 2002, BellSouth returned timely rejection notices for only 53.85% of the orders in this

category — approximately 43% below the benchmark standard. *Id.* at B.1.4.15.<sup>40</sup> In April 2002, BellSouth returned timely rejection notices for only 78.95% of the orders within this category — approximately 18 percentage points below the benchmark.

149. BellSouth has failed to meet the benchmark standard for the timely return of rejection notices for mechanized Resale business orders. Thus, for example, in January 2002, only 86.05% of the rejection notices for Resale business orders were issued within the one-hour benchmark — approximately 11 percentage points below the 97% standard. In February 2002, the percentage of timely rejection notices for this category of orders increased to 91.89% (which was still below the benchmark standard). However, in March 2002, the percentage of timely rejection notices for these same orders declined to 87.37% -- approximately 10 percentage points below the benchmark standard. *Id.*

150. For certain partially-mechanized orders, BellSouth must return 85% of CLEC rejection notices within a 10 hour interval. BellSouth has failed to meet this standard. For example, in April 2002, BellSouth returned timely rejection notices for only 70% of UNE ISDN loop orders. *Id.* at B.1.7.6. Similarly, in March and April 2002, BellSouth failed to meet the benchmark standard for this measure for 2W Analog Loop Design orders. *Id.* at B.1.7.8. BellSouth also failed to meet the benchmark standard for this measure in April 2002 for 2W Analog Loop Non-Design orders (*id.* at B.1.7.9.); in February and March 2002 for 2W Analog

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<sup>40</sup> In March 2002, BellSouth also failed to meet the benchmark standard for returning timely rejection notices for partially-mechanized orders. During that month, BellSouth failed to meet the benchmark standard for partially-mechanized UNE 2 Wire Analog Loop with LNP Non-Design orders, UNE INP Standalone orders, and UNE LNP Standalone orders. *Id.* at B.1.7.13, B.1.7.16, and B.1.7.17.

Loop with LNP Non-Design orders (*id.* at B.1.7.13.); in March 2002 for INP Standalone orders (*id.* at B.1.7.16.); and in March and April 2002 for LNP Standalone orders (*id.* at B.1.7.17.).

**2. Provisioning**

151. **Troubles Within 30 Days.** BellSouth's provisioning performance has been unstable and subpar. During seven of the past twelve months from May 2001 through April 2002, BellSouth failed to meet the parity standard on the measure of the percentage of provisioning troubles within thirty days for Resale business dispatch orders consisting of ten or fewer circuits. *Id.* at A.2.12.2.1.1.

152. BellSouth's performance data show that retail orders experienced fewer provisioning troubles within 30 days of installation than those experienced by CLECs for other categories of CLEC orders, including: Loop & Port Combinations < 10 circuits / Dispatch orders (April 2002) (B.2.19.3.1.1.); Loop & Port Combinations < 10 circuits / Non-Dispatch orders (February, March and April 2002) (B.2.19.3.1.2.); Loop & Port Combinations < 10 circuits / Switch Based orders (April 2002) (B.2.19.3.1.3.); Loop & Port Combinations < 10 circuits / Dispatch In /NC (March and April 2002) (B.2.19.3.1.4.); Combo Other < 10 circuits / Dispatch orders (April 2002) (B.2.19.4.1.1.); UNE xDSL < 10 circuits / Dispatch orders (April 2002) (B.2.19.5.1.1.); UNE ISDN < 10 circuits / Dispatch orders (April 2002) (B.2.19.6.1.1.); UNE Line Sharing < 10 circuits / Dispatch orders (March and April 2002) (B.2.19.7.1.1.); UNE Line Sharing < 10 circuits / Non-Dispatch orders (April 2002) (B.19.7.1.2); 2W Analog Loop Design > = 10 circuits / Dispatch orders (February and March 2002) (B.2.19.8.2.1.)

153. **Average Completion Notice Interval.** BellSouth's MSS reports include data for the "Average Completion Notice Interval" measurements. BellSouth's own performance

data show that it has not met the parity standard for this measure for 2 wire UNE analog loop design (dispatch) orders consisting of fewer than 10 circuits. Thus, for example, in January 2002, the average completion notice interval (mechanized) for retail orders was 2.02 hours, while the average completion notice interval for 2 wire analog loop design (dispatch) orders was 11.11 hours (resulting in a z-score of -8.2744). *Id.* at B.2.21.8.1.1. In February 2002, the average completion notice interval for retail orders was 1.61 hours, while the interval for 2 wire analog loop design (dispatch) orders was 24.21 hours (resulting in a z-score of -22.7042). In March, the average completion notice interval for retail orders was 1.78 hours, while the interval for 2 wire analog loop design (dispatch) orders was 24.62 hours. *Id.*

154. Similarly, BellSouth has not performed at parity with respect to average completion notice intervals for 2 wire UNE analog loop with LNP design (dispatch) orders consisting of fewer than 10 circuits. *Id.* at B.21.12.1.1. In January 2002, the average completion notice interval for retail orders was 2.02 hours, while the same interval for 2 wire analog loop with LNP design (dispatch) orders consisting of fewer than 10 circuits was 7.64 hours – over three times longer. In February 2002, the average completion notice interval for 2 wire analog loop with LNP design (dispatch) orders consisting of fewer than 10 circuits was six times longer than that for retail orders. In March 2002, BellSouth's performance in this area deteriorated further. During that month, the average completion interval for retail orders was 1.78 hours. In stark contrast, the same interval for 2 wire analog loop with LNP design (dispatch) orders consisting of fewer than 10 circuits was 15.48 hours. *Id.*

155. **% Jeopardies-Mechanized.** BellSouth's MSS reports include a measure of the percentage of orders in jeopardy of not being completed on the due date. BellSouth's

performance data show that a greater percentage of CLEC orders have been placed in jeopardy than retail orders. Indeed, during the period from April 2001 through March 2002, BellSouth consistently failed the parity standard for this measure for UNE 2W Analog Loop Design orders that are electronically submitted. *Id.* at B.2.5.8. During January 2002, only 0.30% of retail orders were placed in jeopardy, while 11.76% of UNE 2W Analog Loop Design orders were placed in jeopardy. In February 2002, only 0.43% of retail orders were in jeopardy of not being completed on the due date, while 12.16% of UNE 2W Analog Loop Design orders were in jeopardy. Similarly, in March 2002, 0.47% of retail orders were in jeopardy, while 11.46% of 2W Analog Loop Design orders were in jeopardy.

156. BellSouth also performed at a subpar level on this measure for UNE 2W Analog Loop with LNP Design orders. *Id.* at B.2.5.12. From October 2001 through March 2002, BellSouth consistently failed to meet the parity standard for this measure for this category of orders. For example, in February 2002, only 0.43% of retail orders were placed in jeopardy, while 5.88% of UNE 2W Analog Loop with LNP Design orders were in jeopardy. *Id.* at B.2.5.12. In March 2002, BellSouth's performance fared no better. During that month, only 0.47% of retail orders were in jeopardy, while 6.06% of UNE Analog Loop with LNP Design orders were in jeopardy.

157. Furthermore, during the period from May 2001 through March 2002, BellSouth consistently failed to meet the parity standard for this measure for UNE Digital Loop  $\geq$  DS1 orders. *Id.* at B.2.5.19. Thus, for example, in January 2002, only 5.88% of retail orders were in jeopardy, while an astonishingly high 58.33% of UNE Digital Loop  $\geq$  DS1 orders were in jeopardy. *Id.* at B.2.5.19. In February 2002, while less than 4% of retail orders were in

jeopardy, 60.87% of UNE digital Loop  $\geq$  DS1 orders were in jeopardy. And in March 2002, while less than 3% of retail orders were in jeopardy, approximately 59% of UNE Digital Loop  $\geq$  DS1 were in jeopardy (resulting in an incredibly high z score of  $-30.6945$ ). *Id.*<sup>41</sup>

158. **Missed Installation Appointments.** BellSouth has not met the parity standard for the Missed Installation Appointments measure. During seven of the twelve months from May 2001 through April 2002, BellSouth missed the parity standard for this measure for Resale residential nondispatch orders consisting of fewer than 10 circuits (*id.* at A.2.11.1.1.2.). Additionally, in April 2002, it missed the parity standard for this measure for Resale business dispatch orders consisting of fewer than 10 circuits (*id.* at A.2.11.2.1.1.).

159. From July 2001 through April 2002, BellSouth missed the parity standard for this measure for UNE Loop-Port Combination dispatch orders consisting of fewer than 10 circuits. *Id.* at B.2.18.3.1.4. Similarly, from May 2001 through April 2002, BellSouth consistently missed the parity standard for this measure for UNE LOOP and Port Combination nondispatch orders consisting of fewer than 10 circuits. *Id.* at B.2.18.3.1.2.<sup>42</sup>

160. **Order Completion Interval.** BellSouth's own performance data show that it has not provisioned CLEC orders at parity. In February, March and April 2002, the installation intervals for UNE Combo Other dispatch orders consisting of fewer than 10 circuits

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<sup>41</sup> BellSouth also failed to meet the parity standard for this measure for other product categories. In February and March 2002, BellSouth failed to meet the parity standard for this measure for Resale residential orders (*id.* at A.2.4.1.) and UNE Combo Other orders (*id.* at B.2.5.4.). In March 2002, BellSouth failed to meet the parity standard for this measure for UNE ISDN orders. *Id.* at B.2.5.6.

<sup>42</sup> In March 2002, BellSouth missed the parity standard for this measure for UNE Line Sharing orders consisting of fewer than 10 circuits. *Id.* at B.2.18.7.1.1.



were longer than those for retail orders. In February 2002, BellSouth completed retail orders in 5.10 days, but took 11.83 days to complete UNE Combo Other dispatch orders consisting of fewer than 10 circuits. *Id.* at B.2.1.4.1.1. In March 2002, BellSouth installed retail orders in 5.32 days, but took 12 days to complete UNE Combo Other dispatch orders consisting of fewer than 10 circuits. *Id.* And in April 2002, the order completion interval for UNE Combo Other Dispatch orders consisting of fewer than 10 circuits was twice as long as that for retail orders (*i.e.* 4.97 days v. 10.67 days).

161. Similarly, from November 2001 through March 2002, BellSouth consistently failed to perform at parity when completing UNE 2W Analog Loop with LNP Design dispatch orders consisting of fewer than 10 circuits. B.2.1.12.1.1. Thus, for example, during the period from November 2001 through April 2002, the completion intervals for UNE 2W Analog with LNP Design dispatch orders consisting of fewer than 10 circuits were over 1 day longer than those for retail orders. *Id.*<sup>43</sup>

162. Additionally, BellSouth has not performed at parity when provisioning UNE Digital Loop dispatch orders <DS1< 10 circuits. B.2.1.18.1.1. From December 2001 through April 2002, BellSouth's order completion intervals for this category of UNE orders were approximately 3 to 4 days longer than those for retail customers.

### **3. Maintenance and Repair**

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<sup>43</sup> BellSouth concedes that it did not meet the parity standard for 2 wire analog and non-design. Varner Aff. ¶180, Exhibit PM-5. Remarkably, BellSouth admits that it designed discrimination processes, but then attempts to use this rationale for failing the performance standard. *See id.* (noting that "the installation interval for the analog loop is fixed based on the ordering guides where the retail analog is much shorter based on the due date calculator process").

163. **Maintenance Average Duration.** BellSouth has not performed at parity when repairing troubles reported by CLECs. For example, from December 2001 through February 2002, BellSouth did not perform at parity when repairing troubles reported for Resale ISDN (non-dispatch) orders. *Id.* at A.3.3.6.2.

164. Similarly, BellSouth did not perform at parity in repairing troubles reported on UNE ISDN non-dispatch orders. *Id.* at B.3.3.6.2. For example, in January 2002, BellSouth averaged 1.29 hours to repair retail troubles, while BellSouth averaged 3.95 hours for the non-dispatch repair interval for UNE ISDN trouble reports. In February 2002, it took BellSouth 1.52 hours to repair retail troubles, while it took BellSouth 4.26 hours to repair troubles reported for UNE ISDN non-dispatch orders.

165. **Customer Trouble Report Rates.** From May 2001 through April 2002, the customer trouble report rates reported on Resale Design (Specials) dispatch orders were higher than those for retail customers. *Id.* at A.3.2.3.1. During six of the past twelve months from May 1, 2001 through April 2002, the customer trouble report rates for Resale PBX dispatch orders were higher than those for retail customers. *Id.* at A.3.2.4.1.

166. Similarly, the customer report rates for Resale ISDN dispatch orders were higher than those for retail customers from December 2001 through March 2002. *Id.* at A.3.2.6.1. Furthermore, during February and March 2002, BellSouth failed to meet the parity standard for customer trouble report rates for UNE Other Design Dispatch orders (*id.* at B.3.2.10.1); and from December 2001 through March 2002, BellSouth failed to meet the parity standard for the same measure with respect to UNE Other Non-Design / Non-Dispatch orders (*id.*

at B.3.2.11.2).<sup>44</sup>

167. **Missed Repair Appointments.** BellSouth concedes that it missed one of the six submetrics for the Missed Repair Appointments measure for UNEs. Varner Aff., Exhibit PM-5, ¶6. Attempting to dismiss the significance of these failures, BellSouth contends that by “[e]xcluding the reports when no trouble was found, the missed appointment rate for CLP orders, for this sub-metric would have been lower than for the retail analogue.” *Id.* What BellSouth fails to include in its analysis is the fact that the retail analog presumably also includes instances of reports where no troubles were found. As a consequence, excluding those reports from the retail analog would lower the missed appointment rate for retail as well.

#### 4. **Billing**

168. BellSouth concedes that, in February 2002, it missed the performance standard for the Recurring Charge Completeness - Interconnection Measure and Recurring Charge Completeness-UNE measure. Varner Aff., Exhibit PM-5, ¶¶ 70–71. BellSouth also admits that, for resale orders, it missed the benchmark standard for the Non-Recurring Charge Completeness Measure in January and March 2002. As to local interconnection orders, BellSouth also concedes that it missed the benchmark standard for Non-Recurring Charge Completeness in January and March 2002. Although BellSouth claims that it plans to take corrective action to improve its performance, these are merely unfulfilled promises.

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<sup>44</sup> In March 2002, BellSouth failed to perform at parity with respect to customer trouble report rates for Resale PBX dispatch orders (*id.* at A.3.2.4.1.); Resale Centrex dispatch orders (*id.* at A.3.2.5.1.); Resale ISDN Non-Dispatch orders (*id.* at A.3.2.6.2.); and UNE Other Non-Design dispatch orders (*id.* at B.3.2.11.1.).

**E. Kentucky**

**1. Ordering**

169. In Kentucky, the rejection rates for CLEC orders are far too high. From January through March 2002, over 25% of Resale residential partially-mechanized orders were rejected by BellSouth's systems.<sup>45</sup> The rejection rates for Resale business partially-mechanized orders were even higher. During January, February and March 2002, the rejection rates for this category of orders were 34.97%, 48.70%, and 50.32%, respectively. *Id.* at A.1.2.2.

170. In January and February 2002 the rejection rate for Loop and Port combination orders was over 17%, and in March 2002, the rejection rate for this category of orders increased to 23.81%. *Id.* at B.1.1.3. Similarly, from January through March 2002, the rejection rates for DSL orders ranged from a low of 25% in February to a high of 38.10% in March 2002. *Id.* at B.1.1.5. Furthermore in January 2002, the rejection rate for UNE Other Non-Design orders was 27.37%, and, in February 2002, the rejection rate for this category of orders increased to 39.89%. *Id.* at B.1.1.15.

171. **Rejection Intervals.** In Kentucky, BellSouth has failed to meet the benchmark standard for rejection notice timeliness. In April 2002, BellSouth failed to meet the 24 hour benchmark standard for the timely rejection of Resale PBX non-mechanized orders.

172. Similarly, from May 2001 through April 2002, BellSouth failed to meet the benchmark standard for the timely return of rejection notices for mechanized Loop and Port Combination orders. *Id.* at B.1.4.3. Furthermore, during the period from October 2001 through

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<sup>45</sup> Kentucky Trend Charts, April 2002-March 2002, A.1.2.1. During these months, the rejection rates for this category of orders were 27.23%, 27.87%, and 27.43%, respectively.

April 2002, BellSouth failed to meet the 97% benchmark for standard for the timely return of rejection notices for mechanized Line Sharing orders. Indeed, in April 2002, BellSouth returned approximately 42% of the rejection notices from this category or orders - - well below the 97% threshold. *Id.* at B.1.4.7.

173. **FOCs.** BellSouth has failed to issue FOCs in a timely manner. According to BellSouth's SQM, 85% of FOCs for partially mechanized orders should be issued within 10 hours. However, in April, only 71.43% of LNP Standalone partially mechanized orders were issued within the 10 hour interval. *Id.* at B.1.12.17.

## **2. Provisioning**

174. **Missed Installation Appointments.** Most recently, BellSouth has failed to meet the parity standard for missed installation appointments. In March 2002, although BellSouth missed only 1.28% of its retail installation appointments, it missed 8.93% of the installation appointments for Resale business dispatch orders consisting of fewer than 10 circuits. *Id.* at A.2.11.2.1.1.

175. **Troubles Within 30 Days.** Furthermore, CLECs have experienced more provisioning troubles within 30 days of installation than those experienced by retail customers. From January 2002 through April 2002, BellSouth failed the parity standard for this measure for Resale business dispatch orders consisting of fewer than 10 circuits. *Id.* at A.2.12.1.1. For example, in January 2002, only 1.83% of BellSouth's retail orders experienced installation troubles within 30 days of installation, while 10.42% of Resale business orders consisting of fewer than 10 circuits experienced such troubles. *Id.* at A.2.12.2.1.1. In April 2002, while only 9.41%

of retail orders experienced installation troubles, 19.70% of Resale business dispatch orders consisting of fewer than 10 circuits experienced such troubles. *Id.* ¶ 110.

176. **Jeopardy Notices.** In addition, BellSouth placed in jeopardy a greater percentage of CLEC orders than it placed its own orders. From January 2002 through March 2002, BellSouth missed the parity standard on the measurement of the percentage of jeopardies-mechanized. For example, during February and March 2002, more Resale residential (mechanized) orders were in jeopardy as compared with retail orders. *Id.* at 2.4.2.

177. From August 2001 through April 2002, BellSouth failed the parity standard for the % jeopardies-mechanized measure for UNE Digital Loop orders greater than or equal to DS1. *Id.* at B.2.5.19. For example, in April 2002, 24.14% of BellSouth's retail orders were in jeopardy, while 81.58% of Bell's UNE Digital Loop  $\geq$  DS1 orders were in jeopardy.

178. **Completion Intervals.** BellSouth has failed to perform at parity when completing CLEC orders. In March and April 2002, BellSouth failed to meet the parity standard for completion intervals with respect to UNE Combo Other dispatch orders consisting of fewer than 10 circuits. *Id.* at B.2.1.4.1. In March, it took BellSouth 5.06 days to complete retail orders, but 11.08 days to complete UNE Combo Other dispatch orders  $< 10$  circuits. In April, BellSouth completed retail orders in 5.6 days, but completed UNE Combo Other dispatch orders  $< 10$  circuits in 11.21 days, resulting in a z-score of  $-2.32$ . *Id.* at B.2.1.4.1.1.

### **3. Maintenance and Repair**

179. **Duration of Troubles.** BellSouth does not repair troubles reported by CLECs in substantially the same time that it repairs troubles reported by its own retail customers. In February 2002, the duration of troubles for retail customers was 9.44 hours, while the duration

of troubles for Resale Centrex dispatch orders was 19.71 hours. Similarly, in March 2002, the duration of trouble for retail customers was 9.52 hours, while the duration of troubles for Resale Centrex dispatch orders was 22.75 hours. *Id.* at A.3.3.5.1.

180. **Trouble Report Rates.** In Kentucky, the trouble report rates for CLECs have been higher than those for BellSouth's retail orders. In February and April 2002, BellSouth missed the parity standard for customer trouble report rates for Resale PBX Dispatch orders. A.3.2.4.1. Thus, for example, in April the retail trouble report rate was 0.23%, while the trouble report rate for Resale PBX Dispatch orders was 2.41%; resulting in a z-score of -10.4536. *Id.*

#### **4. Billing**

181. BellSouth concedes that it failed one-third of the submetrics for the Non-Recurring Charge Completeness measure from January through March 2002. Varner Aff., Exhibit PM-3, ¶ 72. BellSouth attributes some of these problems to back-billed OSS charges that were applied to CLEC accounts. *Id.* Although BellSouth notes that it has launched an initiative so that OSS charges can be billed on a current basis, this is simply another paper promise entitled to no weight.

#### **F. South Carolina**

##### **1. Ordering**

182. The rejection rates in South Carolina are high. From January through March 2002, the rejection rates for Resale business partially mechanized orders were over 30%. During those months, the rejection rates for this category of orders were 31.15%, 46.83%; and 37.06%. In February and March 2002, over 20% of Resale (mechanized) business orders were rejected. A.1.1.2. From January through March 2002, the rejection rates for UNE Other Design (mechanized) Orders were 85.71%; 91.30% and 85.71%, respectively. During that same period,

the rejection rates for UNE Other Non-Design (mechanized) Orders were 36.30%, 32.00%; and 25.16%. *Id.* at B.1.1.15.

183. **Rejection Interval.** BellSouth has failed to meet the benchmark standard for delivering 97% of CLEC rejection notices within 1 hour. During ten of the past twelve months from April 2001 through March 2002, BellSouth failed to delivery timely rejection notices for UNE Other Non-Design orders. *Id.* at B.1.4.15. For example, in February 2002, BellSouth timely returned only 81.67% of rejection notices for orders in this UNE category – – approximately 15 percentage points below the benchmark. In March 2002, BellSouth's performance deteriorated. During that month, BellSouth returned only 73.42% of rejection notices within the one-hour interval for this UNE category of orders – –approximately 24% below the benchmark standard. *Id.* at B.1.4.15.

184. Similarly, BellSouth has failed to meet the one-hour benchmark standard for this measure for Resale business orders. *Id.* at A.1.4.2. From December 2001 through March 2002, BellSouth failed to meet the benchmark standard for this category of orders. For example, in February 2002, BellSouth returned timely rejection notices for 90% of Resale (mechanized) business orders – – 7% below the benchmark standard. *Id.* In March 2002., BellSouth issued timely rejection notices for only 84.78% of the Resale business orders – – well below the 97% standard.

## **2. Provisioning**

185. **Provisioning Troubles Within 30 Days.** BellSouth admits that, during the period from January through March 2002, it missed four of the 14 submetrics for the measure on provisioning troubles within 30 days for UNE Loop and Port Combinations. Varner Aff.,



Exhibit PM-6, ¶ 58. BellSouth contends, however, that, because “approximately one-third of the reports were closed as ‘no trouble found’” there was “only minor impact on the end-user customer.” *Id.* Despite BellSouth’s contrary suggestion, the mere fact that a BellSouth technician closed a report as a “no trouble found” does not mean that the trouble report was invalid. Furthermore, even taking BellSouth’s explanation at face value, it would appear that its technician did, in fact, find troubles associated with two-thirds of the reports, thereby indicating that end-user customers were impacted.<sup>46</sup>

**3. Maintenance and Repair**

**186. Maintenance Average Duration / Customer Trouble Report Rate.**

BellSouth admits that it missed one-third of the six submetrics with CLEC activity for the Maintenance Average Duration-ISDN measure. Varner Aff., Exhibit PM-6. BellSouth also concedes that it failed 13 of the 36 submetrics for the % Customer Trouble Report Rate measures for Resale orders. Varner Aff., Exhibit PM-6. True to form, BellSouth claims that “a large number of these reports closed ‘as no trouble found.’” However, these closure reports do not prove that the trouble report was unwarranted.

**4. Billing**

187. BellSouth admits that, it missed one-third of the submetrics for the Non-Recurring Charge Completeness Measure from January through March 2002. Varner Aff., Exhibit PM-6. BellSouth contends these errors were due to difficulties in completing service

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<sup>46</sup> BellSouth also admits that it missed 25% of the submetrics for the Missed Installation Appointments measure for UNE Loop and Port Combinations during the period from January through March 2002. Varner Aff., Exhibit PM-6, ¶ 56.

orders in a timely fashion, and to back-billed OSS charges. Although BellSouth asserts that it plans to take steps to improve performance, this is yet another paper promise.

**VI. BELLSOUTH'S REMEDY PLANS ARE INADEQUATE.**

188. There is no factual basis for BellSouth's claims that the performance remedy plans in the States included in its Application will ensure that BellSouth will meet its performance obligations to CLECs after Section 271 approval. As a preliminary matter, no performance remedy plan can be effective unless it is based on a comprehensive set of measures which produce accurate results. Because BellSouth's performance data which serve as the springboard for performance remedies payments are unreliable, the effectiveness of all of the remedy plans that are the subject of this Application is fatally compromised. However, even assuming *arguendo* that BellSouth's data are accurate and reliable -- and they are not -- BellSouth's reliance on the remedy plans in Alabama and North Carolina is premature.

189. As the Commission has recognized, the public interest analysis in Section 271(d)(3)(C) is an independent element of the "statutory checklist" that "requires an independent determination."<sup>47</sup> As part of that analysis, the Commission has recognized that a BOC's performance monitoring and enforcement plan can "constitute probative evidence that the BOC will continue to meet its Section 271 obligations and that its entry would be consistent with the public interest."<sup>48</sup>

190. The principal purpose of an anti-backsliding plan is to provide sufficient monetary incentives for a BOC to continue providing CLECs the nondiscriminatory support that

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<sup>47</sup> See August 2001 MSS, Measurement P-3.

<sup>48</sup> *New York 271 Order* ¶ 429.

is required after a Section 271 approval. After a BOC is authorized under Section 271 to provide long distance services, it will no longer have the powerful business incentives provided by the lure of Section 271 approval to provide nondiscriminatory support for CLECs.

191. As the Commission explained in its *Michigan 271 Order*, to provide the most effective possible deterrent against discriminatory performance after a Section 271 Application is granted, an anti-backsliding plan should include “appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards.”<sup>49</sup> To meet this standard, an anti-backsliding plan must have sufficient monetary consequences to dissuade the BOC from exercising its natural incentives to leverage its monopoly power in the local market, together with its position as the primary supplier of wholesale inputs to CLECs, to harm competition in both the local and long distance markets. In addition, in order to serve as an effective deterrent, the consequences of discriminatory performance must be unambiguous, and those consequences should be essentially self-executing and as immediate as possible. In that connection, the Commission has emphasized the importance of remedial measures that are “automatically triggered” by noncompliant conduct:<sup>50</sup>

[A]s part of our public interest inquiry, we would want to inquire whether the BOC has agreed to private and *self-executing enforcement mechanisms* that are automatically triggered by noncompliance with the applicable performance standard without resorting to lengthy regulatory or judicial intervention. The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings

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<sup>49</sup> *Michigan 271 Order* ¶ 394. See also *Second BellSouth Louisiana Order*, ¶ 364.

<sup>50</sup> *Michigan 271 Order* ¶ 394.

to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent.

192. In its *New York 271 Order*, the Commission identified the following key elements in a performance monitoring and enforcement plan that would support a showing “that markets will remain open after grant of the Application”.<sup>51</sup>

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
- clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- reasonable assurances that the reported data is accurate.<sup>52</sup>

193. In its Application, BellSouth suggests that its Alabama and North Carolina remedy plans satisfy all of the key criteria identified by this Commission in its *New York 271 Order*. BellSouth’s assertion is meritless.

194. As BellSouth concedes, both the Alabama and North Carolina remedy plans have been adopted only on an interim basis. *See Varner Aff.* ¶ 214. Indeed, the Alabama Commission has adopted the Georgia SEEM on an interim basis “until a final determination is made by the APSC during the six-month review.” *Varner Aff.* ¶ 214.

195. Similarly, although the North Carolina Utilities Commission, recently, ordered the adoption of a remedy plan, it stated “that there is inadequate evidence in the record

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<sup>51</sup> *New York 271 Order* ¶ 435.

<sup>52</sup> *Id.* ¶ 433.

for the Commission to determine exactly which measure should be included in the remedy plan.”<sup>53</sup>

The North Carolina Utility Commission directed the parties to participate in negotiations to determine the appropriate measures that should be included in the plan and to submit a joint report on the results of these negotiations by July 22, 2002. The North Carolina Utility Commission also stated that, until these issues are resolved, BellSouth’s proposed SQM should be used. BellSouth recently filed a motion for reconsideration of this Order.

196. Thus, it remains unclear precisely what measures will be included in the final North Carolina performance remedy plan. Thus, neither the CLECs nor the Commission can assess at this time whether the North Carolina remedy plan will “encompass a comprehensive range of carrier-to-carrier performance.” *New York 271 Order*, ¶ 433.

197. By BellSouth’s own admission, the remedy plans in place in Alabama and North Carolina are interim plans only. As a consequence, neither the CLECs nor the Commission can determine at this juncture whether the permanent penalty plans adopted in Alabama and North Carolina will satisfy the key criteria this Commission has used in assessing the effectiveness of performance remedy plans. Given these circumstances, BellSouth’s reliance on the Alabama and North Carolina interim plans to support its Application is premature.

### **CONCLUSION**

198. BellSouth’s Application fails to demonstrate that its performance data provide sufficient assurance that BellSouth has fulfilled its Section 271 obligations. BellSouth’s

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<sup>53</sup> Order Concerning Performance Measurements and Enforcement Mechanisms, *In the Matter of Generic Docket to Address Performance Measurements and Enforcement Mechanisms*, NCUC Docket No. P-100, SUB 133k, May 22, 2002 at 12.

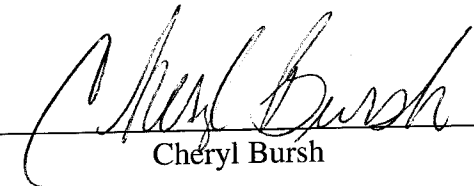
data are not reliable because BellSouth has continued to make unilateral changes to the metrics. Further, contrary to the Commission's expectations, BellSouth has failed to fulfill its commitment to engage in meaningful data reconciliation. Moreover, BellSouth's performance data are saturated with errors and discrepancies, and the ongoing metrics audits in Florida and Georgia provide further confirmation that BellSouth's data are untrustworthy.

199. Remarkably, even BellSouth's own inadequate data show that it has not satisfied its Section 271 obligations. These performance failures include, *inter alia*, low flow-through rates, high rejection rates, inadequate service order accuracy rates, and untimely status notices. BellSouth's data also show that it does not provision CLEC orders at parity, and that it has failed to meet performance standards for maintenance and repair and billing measures.

200. BellSouth's performance remedy plans cannot and do not provide sufficient assurance that BellSouth will comply with its statutory obligations in the future. Because BellSouth's performance data which serve as that basis for remedies payments are inaccurate, the performance remedy plans are fatally compromised. Even if BellSouth's data were accurate, its reliance on the remedy plans to support its Application is misplaced. In Alabama, only an interim plan is in effect, and in North Carolina, no determination has been made regarding the measures that will be included in the plan. As a consequence, BellSouth's reliance on these plans is premature. For all of these reasons, BellSouth's Application should be rejected.

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on July 11, 2002

  
Cheryl Bursh

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on July 11, 2002

Sharon E. Norris  
Sharon E. Norris